United States Court of Appeals

for the Second Circuit



APPELLEE'S APPENDIX

Original with Affidavit of Mailing

74-2675

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2675

UNITED STATES OF AMERICA,

Appellee,

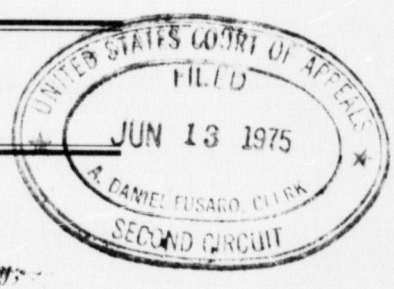
—against—

FREDDIE HILTON,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLEE



DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA

-against-

FREDDIE HILTON,

Defendant.

- - - - - - - - - - - - - - - - - -

74 CR 54

Memorandum of Decision

May 2, 1975

In the process of preparing its brief in opposition to the appeal of defendant's conviction, the government discovered a letter in its file which had not been revealed to defense counsel during the trial. This letter was sent by Avon White, the chief government witness in the prosecution of defendant Hilton, to Assistant United States Attorney Robert Clarey. The letter potentially concerned White's motivation for testifying against the defendant. The government brought the existence of this letter to the attention of the Court of Appeals, which, in turn, directed this court to promptly conduct a hearing to determine what significance, if any, the government's failure to disclose the letter to defense counsel had upon the trial. /1

In compliance with the direction of the Court of Appeals, the court immediately undertook to arrange the hearing. In a letter dated March 26, 1975, the court notified the Assistant United States Attorney Stephen M. Behar, and counsel for defendant, Robert Bloom, Esq., that the hearing would take place on Monday, March 31, 1975. The government stated that it was ready to proceed on this date. However, Mr. Bloom called this office and advised the court that he was engaged in a trial in the Supreme Court, New York County, and that he would be unavailable on the date scheduled. Mr. Bloom confirmed the fact of his engagement in People v. Torres in a letter dated March 27, 1975, and received by the court on March 31, 1975. In his letter, Mr. Bloom requested that the hearing be delayed until the completion of his state trial, anticipating " . . . that I will be finished in the state court in two or three weeks."

In response to this letter, the court advised Mr. Bloom (through its law clerks) of the extreme difficulty of affording a hearing after April 14th, when the judge would be presiding over a lengthy trial involving fourteen (14) defendants. The court further informed Mr. Bloom that Friday, April 18, 1975, (this day being the only day before

May on which the court would not be on trial) was fixed as the hearing date. On April 4, 1975, Mr. Bloom again called this office to inform the court that defendant, a practicing Muslim, could not appear on April 18th, because it was a Friday, and requested that the hearing be rescheduled once again. At this time, Mr. Bloom suggested that Thursday, April 10, 1975 might be a convenient day for him. This date was then fixed for the hearing, and Mr. Bloom was so informed on April 4, 1975.

On April 10, 1975, however, Mr. Bloom failed to appear. Bloom phoned the court that morning (11:30 A. M.) to say that he was awaiting the return of a jury in the state trial, and believed it likely that he would be unable to appear. Mr. Bloom was informed that the hearing could be delayed until 3:00 P. M., but that it would take place on that day. Mr. Bloom responded that he would not appear.

Rescheduling of the hearing for April 10, 1975, created significant difficulties for the government. The court directed the government to produce Avon White, (the witness in question) Robert Clarey, and Peter Truebner, a former Assistant United States Attorney, who had received a letter from White similar to the one sent to Clarey. Mr.

Clarey, now employed as an Assistant District Attorney of Nassau County, was forced to adjourn an important meeting in Connecticut, and Mr. Truebner, now a practicing attorney in Connecticut, had to disrupt his calendar to appear on that day. Nevertheless, all these witnesses were present on April 10th.

Attached to this memorandum of decision is a copy of a letter from Mr. Justice Greenfield, detailing Bloom's role in People v. Torres. Suffice it to say that Bloom had fulfilled his obligation to his client, Gabriel Torres, on March 31, 1975, when the charges against him were dismissed. Yet, despite the direction of this court and his obligation to Hilton, Bloom accepted a "retainer" after the close of the People's case, and continued in the trial as "co-counsel" to assigned counsel for co-defendant Bell. This court was not advised of the role Bloom played in that case until immediately after the hearing was concluded.

The court proceeded with the hearing in Bloom's absence. At the hearing, the court offered to assign counsel; defendant rejected this offer.[2] In addition, the court directed the government to supply defense counsel with a copy

of the transcript of the hearing and invited the submission of briefs by both sides. Defense counsel failed to submit a brief showing how he was hampered by the government's failure to produce the letter.

The hearing, and the circumstances surrounding the hearing, raised two issues: the effect of the letter on the trial, and the propriety of proceeding with the hearing in the absence of Bloom. Considering the effect of the letter first, the court finds:

The testimony of Avon White was vital to the government's case against the defendant, in which he was charged with armed robbery of the Jackson Heights Savings & Loan Association and conspiracy to rob the bank on April 10, 1973. (The jury found the defendant not guilty on the substantive counts and guilty on the conspiracy count.) White was also the government's principal witness in a case brought in the United States District Court for the Southern District of New York, in which defendant and one Joanne Chesimard were charged with bank robbery. A trial in December, 1973, resulted in a mistrial. Both defendants were acquitted in the retrial in the same month.

Since October 26, 1973, White had been in

"administrative segregation" at the New York State Correctional Facility at Ossining, New York while in state custody on charges pending against him.[13] White continued to be held in administrative segregation at Ossining as a witness in a state court trial on an indictment pending in Bronx County. He was also a potential witness in a matter pending in the Southern District of New York, unrelated to United States v. Chesimard and Hilton. White was produced in January, 1974, pursuant to a writ of habeas corpus ad testificundum, before a grand jury of this district to give testimony relating to the Jackson Heights Savings & Loan Association robbery on April 10, 1973. Following this appearance he was returned to Ossining. On February 8, 1974, White wrote a letter to Mr. Clarey advising him that he "[was] being held in solitary confinement and I am on the verge of having a nervous breakdown and I am desperately in need of your help . . . ." He also reminded the government "I have been very cooperative with the government and as you know I am ready to go with you this time on the Government vs. Hilton and I will continue to do so as long as I know that people are trying to help me."[14] A similar letter was sent to Mr. Truebner on the same day.

Mr. Clarey placed the letter in the litigation file, but attached no significance to it. He did not discuss the contents of the letter with Special F.B.I. Agent Robert M. McCartin, who visited White at Ossining before the trial in the above case, and told White that Clarey had received the letter. Clarey forgot about the letter completely until he was advised that an Assistant United States Attorney had come across it while preparing the brief for the appeal. Apparently, the only person who took any action in response to White's letter was Peter Truebner. Truebner called the Assistant District Attorney in charge of the state prosecution seeking his help to alleviate the oppressive conditions. Treubner also called John Curley, White's attorney, to inform him of White's situation. The calls resulted in no change in White's situation, however, and all parties agreed that in the interest of his own safety it was best for White to remain separated from the general prison population.

It is evident that in relation to the two matters raised in White's letter, i.e., his mental condition and his continued willingness to testify for the government in light of the circumstances of his confinement, defense counsel covered, or had information which enabled him to cover, these topics

in his examination of White. A mass of 3500 material was in Bloom's possession long before trial. Bloom represented Hilton in the trial and re-trial in the Southern District. Bloom did not cross-examine White in the first trial in United States v. Chesimard and Hilton, but cross-examination of White in the second trial covered approximately 110 pages of trial transcript. Bloom had available the cross-examination of White conducted by defense counsel in United States v. Kearney, (this testimony covered approximately 95 pages of the transcript) and cross-examination of White by defense counsel in People v. Hayes, (which covered approximately 20 pages).

In addition, before the government called its first witness, it offered to turn over the Great Meadow Correction Institution's report of White (Tr. Exhibit 2A). Bloom volunteered that he already had this report. Before White's cross-examination the government turned over a file, including a psychiatric report of White dated July 2, 1968, which was included in a memorandum of decision and order adjudicating White an incompetent (Tr. Exhibit 3, thereafter marked defendant's Exhibit A, B, C, D and F in evidence).[15] The government also turned over to defense counsel a three-

page F.B.I. interview-report which included White's version of the events leading up to and including the robbery. (Tr. Exhibit 2.)

Bloom's cross-examination of White covers approximately 140 pages of the transcript. The cross-examination explores White's psychiatric history (including his feigning of mental illness) in great detail. It also covers his prior record, then pending state and federal criminal charges, prior inconsistent statements, as well as the "bargain" he made for his testimony. This cross-examination revealed the degree to which White was capable of telling the truth and his motivation for testifying. Of particular significance here is the fact that the two issues raised by White's letter were fully covered. The mental strain which White mentioned in his letter could have added nothing to the voluminous psychiatric history admitted at trial. Similarly, White's veiled threat concerning his continued willingness to testify would have contributed nothing to the issue of White's credibility. First, since no action was taken in response to White's plea, the letter provides no basis for showing that White's testimony could have been affected by his treatment. Secondly, insofar as

the letter relates to his general willingness to testify for the government, this issue was covered extensively when White was questioned about the "deal" he had been given for his cooperation. Finally, it should be noted that Bloom brought out the fact that White was being held in administrative segregation in an attempt to show that he was receiving special treatment, not given to ordinary prisoners.[6] Thus, it is clear that had it been produced, the letter would have contributed nothing of benefit to the defendant, and may even have damaged the attempted impeachment of White.

The letter related to issues touched on generally in White's direct testimony and was therefore producible as Jenks Act material, 18 U.S.C. §3500. United States v. Birnbaum, 337 F.2d 490, 497 (2d Cir. 1964). Since the letter was not provided to defense counsel, the court must determine "whether there was a significant chance that this added item developed by skilled counsel . . . could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction.'" United States v. Sperling, 506 F.2d 1323, 1333 (2d Cir. 1974), citing United States v. Miller, 411 F.2d 825, 832 (2d Cir. 1969). The good faith of the United States Attorney or negligent, rather than intentional, failure, is

immaterial to a determination of whether the verdict should be set aside on this ground. United States v. Miller, supra, at 832; United States v. Badalamente, ___ F.2d ___, Docket Nos. 74-1517, 74-1586 (2d Cir. November 21, 1974). Nor is the test less severe because of the lack of communication between Treubner and Clarey, United States v. Sperling, supra, at 1333.

The potential effectiveness of the letter, of course, depends on the material available to defense counsel at the time of White's cross-examination and the conduct of the cross-examination. From the previous discussion, it is evident that in these respects the effect of the letter would have been negligible. This conclusion is greatly supported by the fact that White's letter is markedly different from letters which have been found to be useful to defense counsel.

In United States v. Pacelli, 491 F.2d 1108, 1119 (2d Cir. 1974) for example, a letter from the government witness to the Assistant United States Attorney in charge of the prosecution revealed a state of mind that would motivate the witness " . . . to tell any lie to anyone in order to save himself from a murder conviction in the state court."[7] The court vacated defendant's conviction and directed a

retrial, noting that "[a]lthough appellant's counsel possessed an abundance of impeaching material which he exploited at trial, none of the information conveyed quite so forcefully as Lipsky's letter to Morvillo the desperate state of Lipsky's mind after he had caused a mistrial by perjurying himself in the previous narcotics prosecution against Pacelli. Appellant's counsel would probably have sought to make this letter the capstone of his attack on Lipsky's credibility, cf., United States v. Miller [411 F.2d 825 (2d Cir. 1969)], and argued that it revealed a frantic—even mentally disturbed—person who was ready to tell any lie in order to save himself from a murder conviction in the state court." Id. Similarly, the failure of the court and government counsel to reveal the contents of a letter from the government witness to the district judge was cause for setting aside the verdict in United States v. Badalamente, supra. In this case, the witness advised the judge that he was "terrorized" by the Assistant United States Attorney, who allegedly insisted "that I tape and entrap a number of prominent people—or he will crucify me." The letter stated that the Assistant United States Attorney threatened to return "frivilous" indictments against the witness. Id. at 5095-96.

In making my evaluation of the use of the letter by skilled counsel if it were available at the time of cross-examination, I have in mind the length of time the jury deliberated and the verdict of not guilty on counts 1 and 2 of the indictment. Having reviewed the direct and cross-examination of White and being aware of the 3500 material in possession of and made available to defense counsel at the time if trial, I find that:

The letters of February 8, 1974, addressed to Assistant United States Attorneys Clarey and Truebner would have offered nothing of significance to defense counsel for cross-examination purposes. The letter in the hands of skilled defense counsel could not have induced a reasonable doubt in the minds of jurors.

Turning to the second issue raised by the hearing, the court is satisfied that given the particular circumstances of this case, proceeding in the absence of Mr. Bloom constituted no error. This conclusion is premised upon several factors. First, the nature of the hearing directed by the Court of Appeals did not demand the presence of Mr. Bloom. The purpose of the hearing was to determine the significance of White's letter. This purpose was

accomplished adequately in Mr. Bloom's absence. The testimony of Clarey, White and Truebner, relevant to the issue before the court, was received. Once this testimony was received, and the facts relating to the letter and any actions taken in response to it were established, there was little that defense counsel could have added. Instead, at this point, the inquiry centered on how the letter might have been used to benefit the defendant. In this regard, Mr. Bloom could have submitted a memorandum outlining how he could have used the letter in the trial, but he chose not to do so. It is apparent therefore that Bloom's absence did not prejudice the defendant.

Secondly, and more importantly, the court had no obligation to reschedule the hearing for Mr. Bloom's convenience: In blunt terms, the question of whether it was permissible to proceed in Bloom's absence boils down to the question of whether the court is obliged to disrupt its own calendar to accommodate an attorney. The answer in this instance is that it is not.

As discussed previously, the court rescheduled the hearing twice at Mr. Bloom's request. Further, it was at his suggestion that April 10, 1975, was fixed as the(final)

hearing date. When this date was fixed, Mr. Bloom was aware of the court's commitments, which excluded any other possible hearing date prior to late May.[8] Mr. Bloom was also aware of the mandate of the Court of Appeals directing this court to conduct a prompt hearing. Despite these facts, however, Mr. Bloom chose not to appear, and instead, spent his time waiting for a jury verdict in a case which he joined as co-counsel, after this hearing had been directed. Under these circumstances the court must conclude that Mr. Bloom's decision not to appear was unjustified, and that the hearing conducted in his absence was proper.

The convenience of the court and the government is of equal importance with that of defense counsel. The right to counsel does not require that the court be precluded from the expeditious exercise of its duties in order that defense counsel can select a hearing date which is most convenient for him. See, United States v. Maxey, 498 F.2d 474, 482-83 (2d Cir. 1974). The court offered to provide defendant with counsel at the hearing, and allowed defendant to examine the witnesses.

Under the circumstances, the court was obliged to do no more. See, United States v. Calabro, 467 F.2d 973,

988-89 (2d Cir. 1972), cert. denied sub nom Conforti v. United States, 410 U.S. 926, 93 S.Ct. 1386 (1973).

This memorandum incorporates the court's findings of fact and conclusions of law.

Jacob Mishler
U. S. D. J.

FOOTNOTES

/1 The Second Circuit Court of Appeals in its order dated March 18, 1975 directed " . . . the district court promptly conduct a hearing to resolve the issues before it to determine the consequences of the failure of the government to reveal before cross examination the existence of a letter dated February 8, 1974 sent by the government's witness Avon White to Assistant United States Attorney Robert Clarey." A copy of this order was received by this court on March 26, 1975.

/2 The defendant indicated his intention of absenting himself from the hearing. The court ordered him to remain. He failed to cross-examine Clarey or Treubner, he cross-examined White.

/3 White described "administrative segregation" as supervision under security that required isolation from all other inmates 23 hours a day; the only privilege allowed in administrative segregation was daily contact with others similarly situated for one hour in the exercise yard.

14
Mr. White's letter stated as follows:

Att: Mr. Clarey

I am writing you this letter to see if there is any way possible that you can have me moved from Ossining Correctional Facility to another institution cause I am being held in solitary confinement and I am on the verge of having a nervous break down and I am desperately in the need of your help, Mr. Clarey I know that this matter is out of your hands but I would really appreciate it if you would get together with the People concerned. I have been very cooperative with the government and as you know I am ready to go with you this time on the government vs. Hilton and I will continue to do so as long as I know that people are trying to help me. I wont let you down when you need me so dont let me down now cause I really need you now please help me.

Sincerely yours,

s/ AVON WHITE 74608

15
Bloom read the following psychiatric diagnosis and evaluation from the report:

MR. BLOOM: Dated July 6, 1968, memorandum from Dr. Ralph Fredman, Chief of Psychiatric Services, New York State Department of Mental Hygiene, to Superintendent J. Convoy, re: Avon White, No. 26253.

"I wish to inform you that I have examined the above inmate psychiatrically and find that he is mentally ill and should be transferred to Mattewan State Hospital," signed Ralph Fredman, M. D. "

. . .

MR. BLOOM: Under recommendations, "In my opinion, this young man is mentally ill and should be transferred to Mattewan State Hospital for further care and treatment."

Next item, your Honor, is signed July 6, 1968 by Dr. Ofner, who says that he is the " . . . physician of Great Meadow Correctional Institution, Comstock, that in his opinion Avon White, No. 26253, a prisoner confined in the aforesaid institution, is mentally ill."

(continued on page 20)

/5 continued

Under Recommendations, "In my opinion, this man is mentally ill and should be transferred to MSH," which I assume is Mattewan State Hospital, " . . . for further care and treatment."

. . .

In a report, examination by two assigned physicians, Dr. Greenberg and Dr. Weiss, Drs. certify that: "They have with care and diligence personally observed and examined on the date of the certificate, namely July 9, 1968, Avon White, now residing at the Great Meadows Correctional Institution, and as a result of such examination find and hereby certify to the fact that he is mentally ill and a proper subject for custody and treatment in the Mattewan State Hospital as a mentally ill person under the provisions of the statute. I have formed this opinion from the history of the case and my examination of the patient as given above."

Finally, your Honor, in the certification by the Judge, decision of Court after hearing, "A hearing having been had upon the application of J. Convoy, Superintendent, Order of Commitment of.

(continued on page 21)

/5 continued

> the said person to an institution for custody and treatment of the mentally ill, on the 12th of July 1968, testimony having been taken as required by law, I do hereby decide that the said Avon White is mentally ill and should be committed to an institution for the treatment of mental diseases."
>
> . . . .

/6 Bloom elicited testimony from White establishing that the cell he had (while in administrative segregation) was larger than those of other prisoners, and that he had more freedom than other prisoners. (Transcript at 333-34.)

/7 The government witness referred to in Pacelli was Barry Lipsky. (Lipsky was the same government witness who wrote a letter to Assistant United States Attorney Feffer which Feffer failed to turn over in the Sperling case. This letter was disclosed after sentencing of Sperling and during testimony given by Lipsky in United States v. Mallah, 503 F.2d 971 (2d Cir. 1974)). Lipsky had

(continued on page 22)

/7 continued

committed perjury at two previous narcotics trials when he denied that he had received any consideration for his testimony. The court thereupon vacated the conviction in one trial and declared a mistrial in the other. A few days later, Lipsky wrote a four-page letter to the Assistant United States Attorney in charge of the case. In it, he stated among other things, that he was in a terrible mental state "because of the mistrial he had caused and declared that his 'main purpose for the last 9-1/2 months'was to 'try my very best to assist the government' and that he 'looked forward eagerly to testifying in narcotics cases for the government against Vincent Pacelli and others (emphasis in original)." United States v. Sperling, supra, at 1332.

/8 The court's two motion days in May (May 2, 1975 and May 16, 1975) are both Fridays. Presumably therefore, defendant would be unable to attend a hearing on either of these days. As explained to Mr. Bloom, the court's calendar from mid-April through May is extremely heavy and a hearing during this period would be quite difficult to arrange.

Supreme Court
of the
State of New York

A 23

JUSTICES CHAMBERS
NEW YORK COUNTY COURT HOUSE
NEW YORK, N.Y. 10007

EDWARD J. GREENFIELD
JUSTICE

April 14, 1975

Judge Jacob Mishler
U. S. District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: People v. Anthony Bottom, Herman Bell, Albert Washington, Gabriel Torres and Francisco Torres

Dear Judge Mishler:

With respect to your inquiry about the availability of Robert Bloom, Esq. and others please be advised:

1. Selection of the jury commenced January 6, 1975. Verdicts were returned against Bottom, Bell and Washington on the charges of murder on April 10, 1975, at 4:10 p.m.

2. At the outset of the case the appearances were as follows: Anthony Bottom - Donald Tucker, Esq.
Herman Bell - Michael Ratner, Esq.
Albert Washington - Pro se
Gabriel Torres - Robert Bloom, Esq.
Francisco Torres - William Mogulescu, Esq.

3. After the close of the People's case, the Court granted the motions by Messrs. Bloom and Mogulescu to enter a trial order of dismissal with respect to Gabriel and Francisco Torres on March 31, 1975.

4. When charges against the defendants Torres were dismissed, Mr. Bloom and Mr. Mogulescu announced that they would thereafter appear for defendants Bell and Bottom respectively. The Court pointed out that these defendants already had counsel designated by the Appellate Division who would not be relieved of their responsibility. Messrs. Bloom and Mogulescu then announced that they had been "retained" by defendants Bell and Bottom, and that they would appear as

"co-counsel". The Court pointed out that under those circumstances they would be considered volunteers and would not receive any further compensation under Article 18B. The Court further pointed out potential problems with conflicts of interest. The attorneys indicated that all clients had acquiesced in the new arrangement. Thereafter Messrs. Bloom and Mogulescu took over all the questioning and all the summation, leaving previous counsel with little to do.

I trust this answers your inquiry. If there is any further information that you wish, please do not hesitate to let me know.

Sincerely,

Edward J. Greenfield

EJG:irm

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-54

FREDDIE HILTON, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

July 15, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

EXCERPT PRIOR TO SELECTION OF JURY

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: ROBERT CLAREY, ESQ.
-and-
GAVIN SCOTTI, ESQ.
Assistant U.S. Attorneys

ROBERT BLOOM, ESQ.
Attorney for Defendant

THE COURT: Mr. Bloom, we had a very brief discussion on the way this trial is going. I know Mr. Hilton claims to be a member of the Black Liberation Army, and the position of this Court is that that's totally irrelevant. The defendant is charged with bank robbery and I won't allow any reference of any kind to his membership or the possible prejudice or sympathy that might be evoked from that kind of a reference. Now, you said that you had a basis for inquiry of the jury whether they know of Mr. Hilton and his reputation as a member of the Black Liberation Army, and I would like you to put as broadly as you can on the record why you say reference of that association is relevant to the issues of the trial.

MR. BLOOM: Let me make my position and Mr. Hilton's position clear. He doesn't claim to be a member of the Black Liberation Army but he's identified by law enforcement officials as being a member of an organization so described and it has been the subject of a good deal of publicity. I dare say, adverse publicity, and what can be called the straight media, radio, television and newspapers and magazines, and that much of the material that has been disseminated by the various media, much about all of that material has come from law enforcement officials, a good portion

from the New York City Police Department, Major Cases Investigating Unit, I don't know what portion of it from other sources but in any event, it exists and may very well be that one or more potential jurors may know the name of Fred Hilton; may know my name representing other people to be alleged members of the organization. That's only the smaller part of it. The greater part of it, when Avon White was arrested in September of 1973, he was arrested with one Melvin Carney; one Robert Hayes and three women; that day or that night, Avon White was interrogated by law enforcement official including members of the F.B.I., and it is our feeling that by that time which is after the apprehension of Mr. Hilton, which is in June 1973, Mr. Hilton at least by the F.B.I. was thought to be a member of the Black Liberation Army, and as such information as to anything that he may or indeed may not have anticipated in a criminal nature was of some significance to the F.B.I., that being so -- and Avon White being aware of that -- that indeed in very brief terms that the F.B.I. was responsible for convicting Mr. Hilton of several crimes, that Avon White would have been willing to save his own neck, which you'll see according to his testimony, that was his interest, to save his own neck, would be very willing to fabri-

cate anything that he thought might help his own position about Fred Hilton and Fred Hilton's associates and Avon White's association whether by choice reputation or force, and other law enforcement agencies is very significant in this trial. If I haven't put it clearly -- the F.B.I. was interested in working on what might be called B.L.A. cases and wanted Fred Hilton. Avon White was much prepared to give them information, whether true or false about Fred Hilton, the membership of that organization, the nature of the F.B.I.'s role and search with respect to reputed numbers of that organization is very critical to the position of Mr. Hilton.

THE COURT: I don't quite understand. This just refers to Avon White's testimony.

MR. BLOOM: I don't know what Mr. Clarey's plans are.

THE COURT: You say Avon White attributed membership --

MR. BLOOM: Prior to Avon White's arrest on December 17, 1973, Fred Hilton way back in the first part of 1973, there was material in newspapers indicating that a man by the name of Fred Hilton was being sought; that he and others were members of the Black Liberation Army terrorist organization and intent on

killing police officers and robbing banks and other nefarious activities; and that being so, Fred Hilton was wanted and wanted as a member of the B.L.A. I said it just there. It relates to whether the jury has heard of any of that, but beyond that --

THE COURT: Excuse me. You say that White's testimony would be colored because he realized that Mr. Hilton was a better catch than just the bank robber.

MR. BLOOM: That's very good.

THE COURT: Anything else that you can think of?

MR. BLOOM: Well, also from the other end, law enforcement end, that law enforcement, particularly the F.B.I. agents who are involved in this case would also be motivated either in their testimony if they do testify or their investigation or their interrogation of Avon White and or other people.

THE COURT: That they wanted to pin it on him because he was a black member of the Black Liberation Army and so their testimony might be --

MR. BLOOM: Not only their testimony, your Honor, but I would submit that it would persuade their entire investigation in the nature of the questions they would ask of civilians and of Avon White and of the woman that was named -- it slips my mind -- who is

associated with Avon White, who I understand also conferred with them. In other words, there is the kind of suggestion brought about, I'm sure, I would submit, in their investigations that would make the B.L.A. and the motivations not only of Avon White but the entire investigative team -- their motivation would be colored and directed very strongly by Mr. Hilton's alleged membership in the Black Liberation Army.

THE COURT: Now, you say that the jurors would be prejudiced against Hilton if they knew that he claimed to be a member or someone attributed membership.

MR. BLOOM: I don't know if they would but I would like to inquire about them.

THE COURT: Suppose it's not mentioned during the trial.

MR. BLOOM: That aspect of the B.L.A., if it's not mentioned but it sits in someone's mind, I know this name, I know this guy and I'm going to convict him because he's a terrorist, I think that would be a problem for us on the one hand. If on the other hand, it is mentioned -- we have pitfalls both ways. I understand what you are suggesting, if it's not mentioned and nobody does know about Fred Hilton or

the B.L.A. they don't associate it in any way with this case and this prosecution. Then your Honor might suggest that nobody has lost anything; but I submit to your Honor we lost a very powerful tool, Mr. Hilton and I, in convincing the jury of not only Avon White's motivation but the motivation of the law enforcement officers in wanting to get Fred Hilton whether he was involved or not involved in this bank robbery.

THE COURT: What is his first name?

MR. BLOOM: Avon.

THE COURT: Avon White. It depends what witnesses the government intends to offer.

MR. BLOOM: I'm sorry to interrupt you. I say it goes beyond that. It goes beyond the prospective testimony of an F.B.I. agent. It goes into the entire investigation, of course, to which I'm not privy, but their entire investigation would direct itself, I believe that there are, I know in the New York City Police Department for example, there is a unit that deals exclusively with B.L.A., and their investigations operate in a certain way. There will be suggestions made, certain pictures. There is a file of pictures that has alleged B.L.A. members; that the direction, the entire direction of the investigation would be affected by the existence or nonexistence of the Black

Liberation Army and Mr. Hilton's alleged membership in that organization.

THE COURT: You think your examination would be limited if you are allowed to inquire to the extent of which Mr. Hilton was wanted and the extent to which Mr. White was willing to cooperate because he knew he was wanted without reference to the B.L.A.?

MR. BLOOM: I think it would unduly -- yes, it would interfere with --

THE COURT: That would seem to give you the best of both worlds, but I don't suppose you want that.

MR. BLOOM: I want the best of both worlds, don't we all. We have more than two worlds. We have at least three considerations that I can see without going into it. What I'm saying to your Honor is this, if I am precluded in effect, saying to the jury, being able to secure evidence so I can sum up to the jury, Mr. Hilton was thought to be a member of the B.L.A. by the F.B.I.; Mr. Avon White was aware of this certainly before, unquestionably at the time of his own arrest in September and his own interrogation the day or night of September 17. I think to preclude me to elicit evidence so that I could so argue would unduly limit Mr. Hilton's position in this case. That's essentially my position.

THE COURT: Do you have any objections to segregating the jury to make certain the charge against Mr. Hilton in other courts, his association might not be brought to the attention of the jury.

MR. BLOOM: May I have a moment with Mr. Hilton?

THE COURT: Mr. Clarey, what do you have to say on this problem?

MR. CLAREY: The question --

MR. BLOOM: Your Honor, let me respectfully say this, I can't answer that until your Honor rules on the other issues.

THE COURT: All right.

MR. CLAREY: With regard to questioning the jury about whether they are familiar with the Black Liberation Army, I think the same results can be accomplished by asking each prospective juror, do you know Freddie Hilton; have you ever heard the name Freddie Hilton; does it ring any bells with you; do you know anything about him? I don't think the question has to be posed, do you know Freddie Hilton and are you aware of the Black Liberation Army.

THE COURT: That's one problem. The other problem is limitation on the right of cross-examination of a government witness and particularly Avon White. The other seems to be purely theoretically but the

defendant says that Avon White is testifying against him because the Police regarded him as a plumb and therefore they were anxious to get him and Avon White knew about it and that's why his testimony is colored, and that's why he's giving Mr. Hilton up.

MR. CLAREY: Let me see if I could put the facts in perspective. Freddie Hilton was arrested June 7, 1973 on a warrant from Southern District charging bank robbery together with Joanne Chesmard (phonetic). That case was tried and resulted in acquittal. The indictment was found prior to the arrest of Avon White who was arrested September 17 of 1973. White did testify in the first Hilton-Chesmard trial; two trials, one resulted in a hung jury before Judge Gagliardi (phonetic); the second was an acquittal before Judge Bawman. Correct me if I am wrong. To say that the F.B.I. went backwards and developed a case purely from White's testimony is absolutely absurd.

THE COURT: That's avoiding the issue. The question is whether the defendant can on cross-examination attack the witness' credibility.

Now, it is a limitation when I say don't ask any questions about membership in the Black Liberation Army. The question is whether it's a reasonable limitation, whether it is or not depends on whether

the claim is minimal and whether the results to be attained is purely speculative.

MR. CLAREY: I believe that the same results can be obtained by cross-examining Mr. White in this manner: Did you know the F.B.I. wanted Freddie Hilton? Is that the reason you put him into a bank robbery?

THE COURT: There are other ways but I want to know.

MR. CLAREY: What does mentioning the B.L.A. add to that?

MR. BLOOM: Can I interject at this point?

THE COURT: What happened to the trials in Southern District? Were you allowed to examine on that?

MR. BLOOM: There was no limitation. I believe what happened in that trial is that there was a co-defendant, Joanne Chesmard, and Mr. Hilton -- to a great extent, Miss Chesmard spoke out in court, both defendants were asked to leave the court and were put in a room behind the courtroom and the evidence or the testimony was piped into them, but it was made clear beyond the cross-examination of witnesses that the two defendants were political people, alleged members of the B.L.A., it's my recollection. I'm not suggesting that's a proper way to do it, but I'm

suggesting as a matter of fact that's what did happen in that case. And the jury heard all that. I cannot remember, to tell you the truth, whether or not particular questions of witnesses were asked in that kind of case.

THE COURT: How about the voir dire?

MR. BLOOM: The voir dire was not done -- I cannot remember.

MR. CLAREY: I was given to understand that all the trials in the Southern District were limited in the manner in which it's been suggested here; the B.L.A. per se could not be brought out.

THE COURT: Can you indicate the nature of the testimony, if any, would be elicited by the witness Avon White which regarded to his motivation for testifying, whether it's motivated by the desire of the F.B.I. to take Mr. Hilton in hand.

MR. CLAREY: When Avon was apprehended, he was questioned about the crimes he had committed. He told the F.B.I. about the crimes he had committed and with whom he had committed them. He has testified already and as Mr. Bloom well knows, in four or five other cases, all involving people with whom he was associated.

(Continued on next page.)

THE COURT: Did he testify as to the membership of this defendant in the B.L.A.?

MR. CLAREY: I have the transcript of White's testimony and four other trials, and I never saw any reference by him to the B.L.A. per se; and I think Mr. Bloom has all of those transcripts also.

THE COURT: Do you have them?

MR. BLOOM: I don't have them with me. I participated in them. I participated in two of them. I don't know what happened in the Melvin Carny (phonetic) trial, which is fairly recent.

MR. CLAREY: I can give you a copy of that.

MR. BLOOM: I have it. I'm going to read it tonight.

THE COURT: Is there any reference?

MR. BLOOM: In the two trials I'm familiar with, I do not recall any. I think Mr. Clarey is correct there was no specific reference to the B.L.A. but I do believe, your Honor, and I may be wrong, that there was talk of Mr. Hilton and Chesmard's political beliefs. I believe that phrase was used.

THE COURT: Did the defendant bring that out?

MR. BLOOM: I believe we did. I believe although Black Liberation Army was not in there, I may be wrong, the words militant was involved and I believe that

Judge Bawman did inquire. I may be mistaken again. He did inquire of prospective jurors if they had any views about black militant people:

THE COURT: I see no relationship between any claim of membership or attributing any membership to the defendant to the Black Liberation Army. I can see nothing but prejudice against the defense by advising the jury that he's a member of the Black Liberation Army. You might find some sympathy amongst some. The possibility that Mr. White, from what I've heard of was motivated because he felt the defendant was wanted by the Police because of his membership with the Black Liberation Army is remotely speculative, and I think it's designed only to turn this trial into a political trial and I would direct the defendant not to mention any possible membership in the Black Liberation Army or his political beliefs or militancy. If the defendant at any time wants to inquire as to Mr. White, I'll permit an inquiry so that the record can be made as to what went on between himself and the F.B.I. or the Police Department concerning the subject matter under discussion, but that's only to give the defendant a chance to make a record. I think it might impose a limitation on the cross-examination. I think the limitation is reasonable. I think that the inquiry can

be made by proper examination of the motives without reference to the Black Liberation Army.

Now, Mr. Bloom, that imposes a difficult task on you in the voir dire, because I give the lawyers the right to inquire directly of the prospective jurors. That means it imposes an obligation on you to stay away from that subject.

MR. BLOOM: I'll adhere to your ruling.

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THE COURT: All right. Let's go.

Mr. Colson, you can take that exhibit with you and talk to Mr. Clarey later. I don't have to make that determination until after Mr. White testifies.

Please produce the witness.

Seat the jury.

(The jury is in the jury box.)

THE COURT: Please swear the witness.

A V O N W H I T E , a witness called on behalf of the United States of America, was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. CLAREY:

Q Mr. White, are you the same Avon White named as a co-conspirator in the indictment presently on trial, United States against Freddie Hilton?

A Yes, sir.

Q You are not named as a defendant in that indictment; is that correct?

A Yes.

Q Mr. White, did you plead guilty in federal court in the Southern District of New York, in Manhattan, to a charge of bankrobbery?

A Yes, I did.

Q Before which judge?

A Gagliardi.

Q Do you know what maximum sentence you could receive as a result of that plea?

A Yes.

Q What is that?

A Twenty years.

Q You have not been sentenced yet, is that correct?

A No, I have not.

Q In which bank did that involve?

A It was a bank on Old Point Avenue in the Bronx.

Q Did that bankrobbery occur September 29, '72?

A Yes, it did.

Q Mr. White, are you presently in state custody?

A Yes, I am.

Q In what state prison are you confined?

A Ossining Correctional Institution.

Q That is commonly known as Sing Sing?

A Yes.

Q Are you in state custody awaiting sentence on a state charge?

A Yes.

Q What was that?

A Attempted murder.

Q You in fact pled guilty in Bronx County to attempted murder?

A Yes.

Q That was attempted murder of a police officer?

A Yes, it was.

Q Have you been sentenced on that charge?

A No.

Q What is the maximum sentence you could receive on that charge, do you know?

A Twenty-five.

Q Have you been made any specific promises concerning what sentence you will receive either in federal court in New York or in Bronx County Court?

A No, I was not.

Q Have you been promised that your cooperation in this case will be made known to the sentencing judges in those cases?

A Yes.

Q Have you also been promised you will not be prosecuted for other bankrobberies?

A Yes.

Q Specifically three other bankrobberies which you admitted to having committed?

A Yes.

Q Including this bankrobbery which is presently on trial; is that correct?

A Yes.

Q Was that guilty plea in the Bronx to attempted murder in satisfaction of any other crimes committed in Bronx County?

A It wasa plea of guilty to another attempt murder which at the time of my sentence -- I mean at the time of my plea they combined the two together and I pled to one --

Q There were two attempted murder charges; is that correct?

A Yes.

Q You pleaded guilty to one?

A Yes.

Q In satisfaction of the other?

A Yes.

Q Are there other charges pending against you right now in other jurisdictions?

A Yes.

Q In fact, there are charges of armed robbery pending against you in Brooklyn and attempted murder pending against you in Queens and armed robberies in Queens?

A Yes.

Q Have any representations or promises whatsoever been made with regard to those charges?

A No.

Q By any prosecuting authority?

A No.

Q As far as you know you are still facing those three charges?

A Awaiting trial.

Q Awaiting trial?

A Yes.

Q Mr. White, have you been convicted of other crimes in your life?

A Yes.

Q When were you convicted? Did you ever serve time in a penitentiary?

A Yes.

Q When was that?

A From May of '67 to April of '70.

Q For what crime was that, sir?

A Youthful Offender.

Q You were sentenced to a three-year sentence on that charge?

A Yes.

Q Where did you spend that time?

A Well, I spent two months in Elmira reception center and I spent eight months in Matawan State Hospital and the remainder of my sentence I spent in Comstock, and on parole.

Q How did you wind up in Matawan State Hospital?

A I went down to the institution psychiatrist and I faked insanity.

Q As a result you were sent to Matawan?

A Yes.

Q When were you released from Matawan?

A I was released from Matawan March 20, 1969.

Q Was that just prior to the expiration of your sentence?

A No.

Q How long after that did you receive parole?

A Seven months.

Q Where did you serve that final seven months?

A I don't understand the question.

Q Where did you serve the seven months after Matawan?

A In Comstock.

Q Had you also spent fourteen months in an institution when you were fourteen years old?

A Yes.

Q Was that for a juvenile offense?

A Yes.

MR. BLOOM: I object to the leading.

THE COURT: Overruled on the grounds stated.

Q How old are you now?

A Twenty-three.

Q Did you ever serve time in North Carolina?

A Yes.

Q How much time?

A Six months.

Q How did you serve it?

A How?

Q In a penitentiary?

A I served -- no, some in awaiting trial and some on a chain gang.

Q What was that offense?

A Carrying a concealed weapon.

Q That parole you referred to earlier, was that revoked?

A Yes, it was.

Q On what ground was it revoked?

A I was arrested for possession of drugs.

Q What was that drug?

A Marijuana.

Q How much marijuana did -you possess?

A I don't remember for sure. I think it was one or two joints.

Q How much time in prison did you do after that revocation of parole?

A I received -- I was sentenced to two months for the marijuana and I owed the state about two and a half months. So altogether about four and a half months.

Q Also in 1967 you did thirty days at Rikers Island; is that correct?

A Yes.

Q What was that for?

MR. BLOOM: I object to the leading. If he omits it --

THE COURT: Overruled on the ground stated. Leading in this type of questioning is helpful and not prejudicial.

MR. BLOOM: May I be heard on that, if your Honor pleases?

THE COURT: The jury may be excused.

(The jury left the courtroom.)

MR. BLOOM: Your Honor, in the Melvin Carney trial a couple of weeks ago the Assistant United States Attorney, Mr. Hemley did not so lead Mr. White

and Mr. White did not name all the things he has here named.

Later, upon cross-examination by Mr. Berman, page 182, starting at page 181 the questions by Mr. Berman were as follows:

"Question: Mr. White, Mr. Hemley asked you where you had served time and how long. My question is that you listed two months in Elmira, eight months Matawan State Hospital for the Criminally Insane, and the rest of your time in Comstock. Did you leave anything out?

"Answer: Did I leave anything out? Two months in Elmira, eight months Matawan -- you mean jail time?

"Question: Yes, your jail time.

"Answer: I was in Brooklyn House of Detention.

"Question: Anything else?

"Answer: No."

In other words, your Honor, without the leading this witness is very prone to omit a lot of things, incarcerations and convictions.

THE COURT: I will allow leading on the question of the record or incarcerations. If you pick another ground on the incarceration I might listen. On the ground stated there is no basis. Seat the jury, please.

(Jury present.)

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CLAREY (Cont'd):

Q Mr. White, have any other promises been made to you concerning the sentences you could receive in the Southern District of New York and in Bronx County?

A You mean, how much time I will receive?

Q Well, was there any promise made concerning how much time you would receive?

A No.

Q Was there any promise concerning anything else with regard to those sentences?

A That-- that they would recommend that I receive a concurrent sentence and -- in a Federal institution.

Q So the recommendation would be that you would receive for both of those offense whatever sentence you received would be concurrent with one another and served in a Federal institution; is that correct?

A Yes.

Q That would be the recommendation of the prosecutors to the Judges?

A Yes.

Q Mr. White, are you acquainted with the defendant

Freddie Hilton?

A Yes.

Q How long have you known him?

A About -- About four years.

Q During late March and early April of 1973, where did you live, Mr. White?

A In -- in an apartment on Marion Avenue, in the Bronx.

Q Did anyone live with you at that time?

A Yes.

Q Who?

A It was myself, Freddie Hilton, Twyman Myers, Phyllis Pollard and sometimes Melvin Kearney was staying there with us.

Q During late March and early April, were there any discussions at that apartment concerning a bank robbery?

A Yes.

Q When approximately was the first such discussion?

A I'd say about -- about the end -- about the end of March.

Q Who participated in that discussion?

A Me, Twyman Myers, Freddie Hilton, Phyllis Pollard and Melvin Kearney.

Q Do you remember what was said during that

discussion?

A I can't remember, you know, word for word.

Q Can you tell us as best you can recall what was said during that first conversation?

A It was said that --

MR. BLOOM: Objection, your Honor.

THE COURT: Can you identify who said what?

THE WITNESS: No.

THE COURT: You can just tell us that it was part of the discussion with these persons present, including the defendant?

THE WITNESS: Yes, sir.

THE COURT: I'll allow it.

THE WITNESS: Okay. You know, we were discussing, you know that -- that we needed some money, you know, and you know, we started, you know, naming, you know, different banks, you know, different locations, you know, and this one was -- you know, was brought up.

BY MR. CLAREY:

Q Which one was brought up?

A The one on Northern Boulevard.

Q Who brought that up, do you recall?

A Twyman.

Q Twyman Myers?

A Yes, sir.

Q And do you recall what he said about that bank?

A He said --

MR. BLOOM: I'll object to that, your Honor.

THE COURT: Overruled. I will allow it.

Was this in the presence of the defendant?

THE COURT: Yes.

THE COURT: While he was there. Go ahead.

THE WITNESS: He said that it was this here small bank on Northern Boulevard, you know, and -- in Queens, you know, and he think that we could, you know, do it easy.

BY MR. CLAREY:

Q Was anything else said about it on that occasion?

A No.

Q Was there any later discussion concerning that bank?

A Yes. The following day, Twyman Myers and Phyllis Pollard, they went into the area of the bank and looked at it, you know, and Phyllis went inside, you know, and brought back a dia --

Q She brought back something? Did you see something she brought back?

MR. BLOOM: I object.

THE COURT: Were you present when she went into the bank?

THE WITNESS: No, sir.

THE COURT: All right. Strike it out.

So you just heard them discuss it?

THE WITNESS: Well, you know, it was -- it was told to us, you know, when they came back. That they went to this bank on Northern Boulevard.

MR. BLOOM: Objection, your Honor.

THE COURT: All right. I will allow the discussion had with Phyllis Pollard; and who was the other?

THE WITNESS: Well, see, the whole group was there at the time. Me, Freddie, Twyman, Phyllis and Melvin, you know. And after they went and looked at the bank, they came back with the diagram of the bank and we started talking about it, you know, then.

THE COURT: All right. I will allow the discussion had -- this was in the presence of Mr. Hilton?

THE WITNESS: Yes.

THE COURT: But just disregard the narration of this witness as to what occurred. The witness is testifying only to what the two individuals came back and told them in the presence of the defendant or at

least that's his testimony and I will allow it.

BY MR. CLAREY:

Q Okay. When they came back, when Twyman Myers and Phyllis Pollard arrived back at the apartment, what happened?

A We had a meeting and at the meeting, you know, all of us was, you know, present, me, Freddie, Twyman Myers, Phillis Pollard and Melvin Kearney, and we looked over the diagram and it was decided by -- by all of us that it would take approximately four -- four people, three inside the bank and one outside the bank, and then, you know, everybody you know just -- you know, chose what job that they felt that they were best -- best suited at -- at doing.

Q So who took what job during that discussion?

A What -- I jumped over the counter, me and Phyllis.

Q Was that discussed, that you would jump over the counter?

A Yes.

Q Go ahead.

A And it was decided that Twyman Myers would, you know, take the guard's gun from him and watch the front door. You know, and that Freddie, you know, would stay outside inside the car.

Q Now, were there any further discussions concerning this bank robbery at a later time?

A Well, you know, when -- we discussed it, you know, about every day. Just about every day, you know. You know, going over our -- our plans, you know, what we need, things that we needed, you know, we needed -- you know, some of us needed gloves and, you know, we needed a car, you know.

Q Who needed gloves?

A I needed gloves, Phyllis needed gloves and Freddie needed gloves.

Q Were gloves obtained?

A Yes.

Q What about other clothing?

A What other clothing, you know, we already had already.

Q I see. Was anything else needed? Was there a discussion about anything else that was needed?

A Just -- you know, like you know what type of disguises we was going to use or something like that.

Q Do you remember what was said about that?

A You know, we had these here hats, you know, that we could pull down over our face, you know, and, you know, see through.

Q What did they look like, what color, do you

know?

A You know, like them Navy -- like he had on -- like a Navy hat, you know, and I cut some eyes in it, too, and you know, I could see through.

Q Was there any discussion about a car?

A Yes.

Q When approximately was that discussion?

A I don't exactly, you know, remember when -- you know, when the first discussion was.

Q Well, what was discussed about a car?

A Well, you know, that we would need a car, you know, a four-door car, you know, so -- in case of emergency, you know, everybody have a door to jump out of.

Q Was anything else discussed about a car during that period prior to April 9th?

A Yes. And then the -- it was, you know, the -- decided that, you know, myself and Freddie Hilton, you know, would go out to Queens College and take a car.

Q Was there any purpose for going to Queens College?

A Well, the only purpose was, you know, that me and Freddie were both, you know, was familiar with the area, you know, around Queens, College, you know.

Q Did you and Freddie Hilton ever go to Queens

College?

A Yes, we went.

Q When was that?

A The day before -- before the bank robbery.

Q Would that have been April 9th of 1973?

A Yes.

Q How did you get to Queens College?

A We took a -- the train and the bus.

Q Subway train and the bus?

A Yes.

Q What time did you arrive there, do you recall, on April 9th?

A Approximately about -- about 1:00 o'clock.

Q Were you armed?

A Yes.

Q Both of you?

A Yes.

Q Do you recall what kind of armament you had?

A Well, I had a nine millimeter, which I didn't use, and I had a .22, which I used, you know, to take the car with.

Q Do you know if Mr. Hilton was armed on that day?

A Yes.

Q Do you with what?

A He had -- he had a nine millimeter and a .32.

Q Was there anything unusual about the nine millimeter that he had?

A Anything unusual?

Q Was there a serial number on it?

MR. BLOOM: Objection, your Honor.

THE COURT: Overruled. I will allow it.

THE WITNESS: No. His -- he scraped it off.

THE CLERK: Hand gun marked Government's Exhibit 13 for Identification.

(So marked.)

BY MR. CLAREY:

Q I'll show the witness Government 13 and ask -- Government 13 for Identification, and ask what kind of a gun is that, do you know?

A Yes.

Q What is it?

A A nine millimeter pistol.

Q Was it similar to the one which Mr. Hilton carried on April 9th?

MR. BLOOM: Objection.

THE WITNESS: Yes.

THE COURT: Overruled, I will allow it.

THE WITNESS: Yes.

Q How is it similar?

A It is -- it is a nine millimeter pistol.

Q Did you know the brand of the gun he was carrying on that day?

MR. BLOOM: Excuse me, your Honor.

I'm just going to object. I wish there were a Marshal available for Mr. White, if he's aiming that gun.

THE COURT: Well, just disregard that statement of Mr. Bloom.

MR. BLOOM: I object and I make that application, your Honor, that that not be shown to that witness in the way it is being shown to him.

THE COURT: Again, I say disregard that statement of Mr. Bloom.

MR. BLOOM: I ask for a ruling on the application, your Honor.

THE COURT: Denied.

Go ahead, Mr. Clarey.

BY MR. CLAREY:

Q Do you know what brand of gun Mr. Hilton carried on April 9th?

A Yes.

Q What brand?

A A Browning nine millimeter. It holds 13 in the

-- in the clip and one in the chamber. That's the same kind that I had.

Q You say you arrived at Queens College at what time, sir?

A Approximately 1:00 o'clock.

Q What did you do when you first arrived there?

A Well, you know, we sat on the grass, you know, near the parking lot, you know, watch people, you know, you know, coming in and -- with their cars and, you know, certain people came in, you know, but they didn't have the right kind of car that we wanted. They had, you know, either a Volkswagen or two-door cars, you know.

So finally somebody came up with a four-door car.

Q Do you know what color that car was?

A It was blue.

(Continued on next page.)

C fols.

DIRECT EXAMINATION

BY MR. CLAREY: (Cont.)

Q About how long had you been there before that four-door car pulled in?

A I'd say about -- about an hour and a half.

Q What,if anything, did you do when that four-door car pulled in?

A Well, it was a man getting out the car. And you know, a nd I walked up to him and I pulled out the .22 and said -- getting ready to lock his door -- and I said don't bother about locking it. Just get back in, don't make no noise and nobody will hurt you or anything.

Q Was Mr. Hilton there at this time?

A Yes.

Q Where was he and what was he doing?

A Was getting inside of the car.

Q Where inside, which door?

A In the driver's side.

Q Did you get in the car also?

A Yes.

Q Which door did you get in?

A I got in the back.

Q Which side?

A On the driver's side, in the back.

Q What happened then after you allgot into the car?

A Then, you know, we drove off, you know, we drove away.

Q Who was driving ?

A Freddie.

Q Do you know where you drove to?

A I don't know, you know, where. I know like it was approximately about two or three blocks from the Long Island Expressway.

Q Was there any conversation in the car while you were driving?

A Yes.

Q While Hilton was driving, excuse me.

A Yes.

We told the guy, you know, that --

MR. BLOOM: Objection.

THE COURT: Is this in the presence of the defendant Hilton?

THE WITNESS: Yes.

THE COURT: Overruled. I will allow it.

THE WITNESS: You know, it was said, you know, that we were dope fiends, you know and that, you know, we wouldn't, you know, kill him if he just

gave us, you know, his money and stuff and you left -- you know. left peacefully.

So we put him out the car, you know, and we told him, don't look back or nothing, which way we going. We left.

BY MR. CLAREY:

Q Did you take anything from him?

A Yes.

Q What?

A We took his car, took his -- his wallet and his watch.

Q Was there any money in the wallet?

A I believe it was about ten dollars.

Q Who took that, you or Mr. Hilton?

A No. He left it on the -- on the car seat. We told him, you know, just leave it there. We would get it.

Q Now, after you dropped this man off, where did you go? If anywhere?

A Well, you know, we -- we got on the Long Island Expressway and you know, we needed some -- some gas, you know, because -- so we put some gas in the car you know.

Then we got back on the Long Island Expressway, to Springfield Boulevard, which you know, would take us to the -- to the Grand Central Parkway and the reason for

that was, you know, because we was going to go by the ---

MR. BLOOM: Objection.

THE COURT: Strike out the "reason for that."

Q Was there a discussion concerning that trip along the Grand Central Parkway?

A Was there a discussion?

Q Yes.

Did you talk about it, you and Hilton?

A Yes. We went to get the car,we said after we get the car, that we would --

THE COURT: Overruled.

I will allow the conversations.

A After we get the car, that we would go, you know, over to the area of the bank and do, you know, a dry run, you know, of the bank, you know, of our escape route and you know, see how long it would, you know, take us.

Q So after dropping this man off, where did you go in his car?

A We went on to the -- the Grand Central Parkway.

Q To where?

A Back to the Bronx.

Q Well, no. After dropping him off, did you go to the vicinity of the bank?

MR. BLOOM: Oh, objection.

THE COURT: Overruled. I will allow it.

A No.

MR. BLOOM: Leading, your Honor.

THE COURT: Overruled.

Did you hear the answer, Mr. Bloom?

MR. BLOOM: No, I didn't hear the answer.

THE COURT: Oh. You might want to hear that.

MR. BLOOM: I was busy making objection, your Honot that I thought was proper.

THE COURT: I beg your pardon?

MR. BLOOM: I was busy making an objection that I thought was quite proper.

THE COURT: All right.

Continue.

MR. BLOOM: I would ask that the answer be read back. The question and answer.

(Record read.)

Q Where,if anywhere, did you go immediately after dropping the man off whose car you had stolen?

A Immediately -fter we dropped him off?

Q Yes.

A On the Long Island Expressway.

Q To where?

A Then we went and got come gas.

Q And then where did you go, if anywhere?

A We took the Long Island Expressway to Springfield Boulevard.

Q And then where?

A To the Grand Central Parkway.

Q And did you do anything when you -- at or near the Grand Central Parkway?

A Yes.

Q What?

A We timed ourselves from the Triboro Bridge approach to the toll booth.

Q Which toll booth?

A The Triboro Bridge Toll Booth.

Q And --

A Going to the Bronx.

Q And with what result?

A It was -- it was five minutes.

Q So was there any other discussion during -- during this timing of the trip?

A Yes. So we figured that --

MR. BLOOM: Objection.

THE COURT: Strike it out.

Don't tell us what you thought. Just tell us what the conversations were.

A This is what the conversation was about.

THE COURT: All right.

A We figured that it would be approximately eight minutes from the bank to the toll booth.

Q Okay.

When that timing of the trip to the toll booth was over, where did you go?

A Went back to the Bronx.

Q To where in the Bronx?

A Marion Avenue.

Q What did you do after arriving at Marion Avenue?

A We parked the car about -- about two houses you know, from the building that we lived in and you know, and we got out, locked the door of the car and went into the trunk of the car.

Q What did you do withthe trunk of the car?

A You know, see what was in it, you know. And it was -- two pairs of golf shoes in there. And we took them out.

Q Then where did you go?

A To the apartment.

Q Was anyone there when you arrived at the apartment?

A Yes.

Q Who?

A Twyman Myers, Phyllis Pollard and Melvin Kearney.

Q Was there any discussion after you arrived back at the apartment?

A Yes.

Q What-- do you recall who said what?

A Well, I know -- you know, when we first walked in, you know, I said we got a car, you know. And -- and everybody was happy, you know. Because, you know, that they knew that,you know, we'd get the money to him.

Q Okay.

How long did you stay in the apartment on that particular -- at that particular time?

What time? Excuse me. What time did you arrive back?

A I'd say approximately 4:00, 4:30.

Q How long did you remain inside the apartment at that time? You, personally?

A About -- about two hours.

Q Did you go anywhere that evening?

A Yes.

Q Was anything said before you went somewhere that evening?

A Yes?

Q What? And by whom, if you recall?

A I don't remember, you know, by whom but I know that it was said that --

MR. BLOOM: Objection.

THE COURT: Strike it out.

Youcan't tell us what somebody else said. What you heard.

THE WITNESS: Excuse me?

THE COURT: What you heard.

THE WITNESS: I'm saying what I heard.

THE COURT: Was it in the presence of Mr. Hilton?

THE WITNESS: YEs.

THE COURT: All right.

MR. BLOOM: I still object on hearsay even if it was allegedly in his presence, your Honor.

THE COURT: You may continue.

THE WITNESS: It was, you know, before I left, it was decided, you know, that we all meet at this apartment on Jessup Avenue in the Bronx.

Q Do you know whose apartment that was?

A Whose apartment it was?

Q Who lived there, Jessup Avenue?

A Freddie used to stay over there sometimes.

Q Freddie who?

A Freddie Hilton.

Q THis defendant?

A Right.

Q And was anything else said about moving to that apartment that night or going to that apartment on Jessup Avenue that night?

MR. BLOOM: Objection.

Hearsay and leading.

MR. CLAREY: Not leading.

THE COURT: Was this in the presen œ of the defendant?

THE WITNESS: I don't understand the question.

THE COURT: All right. Sustained.

The witness says he doesn't understand.

MR. CLAREY: All right.

I'll withdraw it.

Q Did you -- where did you go then after that discussion when you left Marion Avenue?

A I went out.

Q Did you go to see someone?

A Yes.

Q ANd where did you go after you saw someone?

A To the apartment on Jessup Avenue.

Q When you arrived at that apartment, was anyone there on Jessup Avenue?

A Yes.

Q Who?

A Freddi's woman.

Q Anyone else?

A No.

Q Did anyone else come later that -- after you arrived there?

A Yes.

Q Who?

A Freddie, Melvin, Phyllis and Tyman.

Q Do you know where the car was at that time?

A Do I know where the car was at that time?

Q The car that you had stolen, you and Mr. Hilton had stolen.

A When they got there?

Q When they got to Jessup AVenue?

A Yes.

Q Where was it?

A It was about two blocks down from the apartment.

Q On Jessup Avenue?

A Right.

Q Was there any discussion after the others arrived on Jessup Avenue?

A You know we just went over, you know, final preparations. Everybody, you know, went over -- over, you know, their job and what they had to do, you know. And that's it.

Q Now, the following day, did you leave that apartment?

A Yes.

Q At approximately what time?

A Approximately 9:00, 9:30.

Q And who left -- who left with you, if anyone?

A Freddie Hilton, Tymon Myers and Phyllis Pollard.

Q And where did you go?

A We got inside the car and we went to the bank.

Q Who was riding where in the car?

A Freddie was driving. And Tymon was sitting next to him. And me and Phyllis was in the back. I was behind the driver.

Q And where did you go in the car?

A We went to Queens.

Q Where, precisely, in Queens, do you know?

A We got out the car about a block in back of the bank.

Q Is that a block north from Northern Boulevard, from the bank?

A I don't know if it's north, south or nothing like that. I know we got off a block, you know, back of the bank.

Q Who got out?

A Me, Twymon and Phyllis.

Q Was there any discussion on the way over to the bank?

A No.

Q In the car?

Was there any discussion about the bank robbery on the way over in the car toward the bank?

A No.

Q Okay.

Do you know where Mr. Hilton went after he dropped you off?

A Yes.

Q Where?

A He had to go around the corner, you know, and come back around and meet us on -- on side street, you know, and the bank was right on the corner. The side

street was here and the bank was here (indicating).

Q And where was he to meet you?

A On the side street.

Q So how did you get to the bank after you were dropped off?

A We walked. We walked down from -- down the side street that he was going to meet us on.

Q Was it a one-block walk?

A Yes. A long block.

Q Did you enter the bank?

A YEs.

Q Who entered the bank with you, if anyone?

A Twymon and Phyllis.

Q What occurred once inside the bank?

A Well, Twymon walked in first. And the guard was sitting, you know, right by the door. So you know Tymon just, you know, grabbed the guard.

He didn't have no gun or nothing. He made him lay down, you know, and then he watched the door, you know, and me and Phyllis jumped over the counters. And got the money.

(continued next page.)

ws.

DIRECT EXAMINATION

BY MR. CLAREY: (Continuing.)

Q What did you do behind the counter after you jumped over the counter?

A Started getting the money.

Q Once you got the money, what did you do?

A Jump back over and left.

Q What did you do with the money?

A Put it in my pillowcase.

Q What is a pill case?

A Pillowcase.

Q After you jumped back over the counter, what happened?

A Freddie hadn't gotten back yet. He was behind a garbage truck. It took him a long time to get around. We had to wait.

Q Where was the garbage truck? Did you see it?

A I seen it when we got out of the car, you know. Picking up garbage and it was a narrow street. He couldn't pass. So he told us that's why it took him so long.

Q When he did come, what happened?

A We all left the bank and got in the car. Went down that side street to the Grand Central.

Q What happened when you got on the Grand Central?

A You know, the car it had a flat tire. You know. We came off at the last exit before, you know, the toll. It was the Brooklyn exit. And right there there was a diner. And we parked the car there and then there was a train station right there.

Q A subway station?

A El train. And we got on the train, you know. And, you know, we took the train to 126th Street and Lexington Avenue.

Q What did you do once you got there?

A Took cabs back to the Bronx.

Q One cab?

A No, we went in separate cabs.

Q Who went in which cabs?

A Me. and Freddie went in one cab and Twymon and Phyllis went in the other.

Q Did you have anything with you at that time?

A Have anything with me?

Q Did all of you have anything with you?

A Twymon and Phyllis, they had the bag that had money in it. It was a black suitcase that had money and other guns in it.

Q When was the money put in a black suitcase?

A Back inside the car.

Q I will show you government's exhibit 4 in evidence.

Do you know what is shown in that picture?

A What is shown?

Q Yes.

A Yes.

Q Can you tell us what, please?

A The bank, truck, some people.

Q Is the place where the car -- where you got in the car after the bank robbery shown in thatpicture?

A Yes.

Q Where is that in the picture?

A Approximately in the same spot as the truck.

Q Would you put a mark near that truck that you are referring to? There is really only -- well, go ahead.

(Pause.)

MR. CLAREY: Okay, it ismarked. No other questions.

THE COURT: The jury may be excused for a few moments.

(The jury left the Courtroom.)

THE COURT: Does the government have any objection to turning over the other statements, government's exhibit 2?

MR. CLAREY: Well, Mr. Colson took it with him. I have to take a look.

No objection, I will give him the statement and make a copy of it later. This is the actual exhibit.

MR. BLOOM: May I have a few minutes?

THE COURT: We will take a short recess. Tell the clerk when you are ready.

(Recess taken at this time.)

MR. CLAREY: Your Honor, I have two other questions.

THE COURT: Seat the jury.

(The jury is in the jury box.)

THE COURT: Mr. Clarey.

DIRECT EXAMINATION

BY MR. CLAREY: (Cont.)

Q Mr. White, after the four of you were back in the car after the robbery, where were you sitting, all of you?

A Freddie was driving, Twymon was next to him.

Q In the front seat?

A Yes. I was in the back seat, you know.

Q Which side?

A On the driver's side. And Phyllis was in the back in the passenger side.

Q Was anyone wearing gloves at any time on that day or that time specifically?

A Yes.

Q Who?

A All of us had on gloves except Twymon.

Q Is that true for the trip over to the bank also?

A Yes.

MR. CLAREY: I have no other questions.

CROSS-EXAMINATION

BY MR. BLOOM:

MR. BLOOM: I would like to question from here because I have a number of papers.

I would ask that based on certain testimony that Mrs. Grivas be excused from the Courtroom because I may want to question her further.

THE COURT: Mrs.Grivas, would you leave the Courtroom and be available for further examination if you don't mind. You can take a place in the witness room.

MR. BLOOM: Thank you.

MR. CLAREY: If she prefers to wait upstairs, she may.

THE COURT: Just out of the Courtroom. That is all I am directing her to do. I am not directing

her to go to the witness room.

You may proceed.

BY MR. BLOOM:

Q How much do you weigh, Mr. White?

A I don't know.

Q Approximately?

A Approximately 220.

Q I am sorry. 220 you say?

A Approximately, yes.

Q Are you using drugs or medication now?

A Am I using any drugs?

Q I don't mean elicit drugs like heroin, any kind of depressant prescribed by a doctor to calm you down?

A Yes.

Q What are you using?

A Valuim.

Q Vitamins?

A Valium.

Q When is the last time you had Valiums?

A Yesterday.

Q How often do you use Valiums?

A For about the last -- last maybe week I was getting them for three times a day.

Q Was this prescribed to you by a doctor in Sing

Sing?

A No.

Q How do you come to get Valium?

A How do I --

Q Who gives them to you?

A The nurse.

Q At the institution, in the jail where you are staying?

A Yes.

Q Do you know how it came to be you are getting Valiums?

A I asked for them.

Q Is there anything troubling you?"

A Troubling me?

Q Yes.

A Sure.

Q Is that the possible 20 year sentence hanging over your head?

A Possible 25, and more too.

Q Starting with the 25 years with Judge Gagliardi?

A Yes.

Q And the 8 to 30 from Judge Dollinger in the Bronx?

A Yes.

Q And heaven knows what in Kings County, right, for robbery?

A 25.

Q Could be 25 years for that?

A Yes.

Q But you have two Queens cases too?

A Yes.

Q What are they?

A Attempt murder and armed robbery.

Q Attempted murder, is that a police officer or civilian?

A Police officer.

Q Does that carry a possible life sentence?

A Yes.

Q Armed robbery, what does that carry?

A I don't know, because I don't know the exact degree of the armed robbery.

Q How about 25 years, does that ring a bell?

A I don't think it is first degree armed robbery. This is probable use of a weapon.

Q Have you ever discussed the issue with a lawyer?

A About the armed robbery case?

Q About all the possible sentences you might get?

A No.

Q In your view could they run consecutive, one after another, rather than together?

A I don't have any lawyers on the other cases now.

Q So far -- you were arrested September 17 last year?

A Yes.

Q Am I not correct, one lawyer who represented you was a gentleman by the name of Kenneth Bruce?

A Yes.

Q Did you discuss with him all your open cases?

A No.

Q Did you discuss with him the case where he represented you, the Bronx case where you pleaded guilty before Judge Donnelly?

A Briefly he told me he could get me a plea.

Q Did you also have an attorney before Judge Gagliardi for the Old Point Avenue bank robbery, a Mr. Curley from the Legal Aid Society?

A Yes.

Q Did you discuss with him your various cases and the possible punishment you might get?

A No. You see, in a lot of the cases they

recently came up. Like the attempt murder in Queens, I was not aware of this until I believe February 25th when I was indicted. I mean arraigned.

Q Five months ago?

A I don't know, February.

Q Now, Mr. Clarey asked you about your guilty plea before Judge Gagliardi to the bank robbery of Old Point Avenue in the Bronx?

A Yes.

Q So I understand it, was that also -- was the understanding between yourself and the Assistant United States Attorney that that covered that bank robbery plus three others or plus two others?

A Now it is three.

(Continued next page.)

MP:jm
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Q In other words, a total of how many bank robberies are covered and how many did you admit to?

A Four.

Q Four altogether?

A Yes.

Q Oak Point Avenue in the Bronx is one of them?

A Yes.

Q Bruckner Boulevard in the Bronx is another?

A Yes.

Q This is another one?

A Yes.

Q What is the fourth one?

A Linden Boulevard in Queens.

Q When did you talk about that?

A When?

Q When did you first admit to that?

A I don't know.

Q You were interviewed by the FBI the night you were arrested, September 17th?

A Yes.

Q Did you tell them everything you had done, all the criminal activity you participated in?

A I told them all the ones they asked me about.

Q Did they -- Linden Boulevard, what town is that

in?

A Town?

Q Yes.

A In Cambria Heights.

Q Did they ask you about that one?

A No.

Q Let's talk for a moment about your past convictions.

The reason you went up to Elmira, Comstock, Mattewan, Comstock -- is that essentially the way it went?

A Yes.

Q That had to do with assaulting a police officer?

A Youthful offender.

Q Is the underlying fact assault, beating a police officer?

A Yes, sir.

Q How old were you then?

A Sixteen.

Q Did you beat that police officer?

A Did I beat him?

Q Yes.

A No.

Q What did you do to him?

A He hit me and I hit him back.

Q You pleaded guilty?

A I pleaded guilty to youthful offender.

Q But you understood you were pleading guilty to doing something to the police officer, right?

A Yes.

Q You did not go to jail on that case, right?

A No.

Q You also indicated that you did six months in jail in North Carolina for carrying a concealed weapon, is that correct?

A Yes.

Q What name did you use there?

A Paul Jamal Peace.

Q Would you spell the last name?

A P-e-t-e-r-s-o-n.

Q Peterson?

A Yes.

Q That is not your name, is it?

A No.

Q Do you use aliases often?

A Anytime I chose.

Q Why do you use aliases?

A Why?

Q Yes.

A At the time -- at that particular time, I was, you know, I didn't want nobody to know my name because, you know, I was doing things that was wrong.

Q Committing crimes?

A Yes.

Q Robbing banks?

A No, I didn't rob no banks then.

Q What were you doing?

A Associating with people that were robbing banks.

Q Were you doing any wrong things yourself other than associating with people robbing banks?

A Carrying a gun.

Q Anything else?

A No.

Q You used the false name because you were carrying a gun and because you were associating with people doing wrong things?

A Everybody was using false names then.

Q You were too?

A Yes.

Q This was in North Carolina?

A Right.

Q And you did do six months in jail in North Carolina, right?

A Yes.

Q Do you remember testifying June 25, just a couple of weeks ago in another trial involving -- not involving Mr. Hilton, in the Southern District? Page 183, Mr. Clarey.

Do you remember Mr. Berman, B-e-r-m-a-n, an attorney?

A Yes.

Q He had short curly hair?

A Yes.

Q Do you remember the following questions being asked of you by him and you giving the following answers after he showed you a picture:

"Question: Where were you when this picture was taken?

"Answer: In the sheriff's office.

"Question: What were you doing in the sheriff's office in Newton, North Carolina?

"Answer: I was arrested down there.

"Question: What were you arrested for?

"Answer: Criminal possession of a dangerous weapon.

"Question: A gun, right?

"Answer: Yes, that is a gun.

"Question: And you were convicted of that also,

weren't you?

"Answer: Yes, I was.

"Question: And you did six months in North Carolina, didn't you?

"Answer: No, I did not.

"Question: How much time did you do in Newton, North Carolina?

"Answer: I wouldn't do no time in Newton, North Carolina, I did my time in Asheville, North Carolina.

"Question: Asheville, you did some time in Asheville -- "

MR. CLAREY: Objection. This is irrelevant.

MR. BLOOM: Is there an objection?

MR. CLAREY: Objection.

THE COURT: The Jury may be excused.

(The Jury left the Courtroom.)

THE COURT: What is the relevance?

MR. BLOOM: "Question: You did six months in North Carolina, didn't you? "Answer: No, I did not."

That is directly contradictory to his testimony here today on two occasions.

MR. CLAREY: It is obviously a misunderstanding.

THE COURT: Wait. Don't tell me what is obvious, Mr. Clarey. But are you allowed to go into sentencing

and punishment for impeachment purposes? I thought you were allowed to offer convictions. Usually felony convictions.

MR. BLOOM: Your Honor will recall Mr. Clarey asked all on direct examination, how many times, where, for what. Exactly.

THE COURT: I am going to allow it only because I want to give the defendant an unusually unlimited -- I shouldn't say unlimited, I know the places you can reach to in that kind of a determination, but I want to give extraordinary limits of cross-examination. I quite agree with Mr. Clarey but I will allow it nevertheless.

MR. BLOOM: You agree with Mr. Clarey? You don't remember --

THE COURT: Remember what?

MR. BLOOM: He asked where, when, how much time, for what.

THE COURT: Yes, he did. I'm sorry. But it is still collateral and there was no objection on your part, was there, Mr. Bloom?

MR. BLOOM: Absolutely not.

THE COURT: I only rule on objections.

MR. BLOOM: I did not object --

THE COURT: That doesn't give you the right to ask a question if there is an objection.

MR. BLOOM: Where it has been inquired into on direct? Is that your Honor's ruling?

THE COURT: That's right.

MR. BLOOM: Very well, I can't quarrel with your ruling.

MR. CLAREY: What Mr. Bloom is doing here is repeating cross-examination from a prior trial in which Mr. Berman said: Did you mention your North Carolina conviction? No. Did you forget? No, I wasn't asked.

What possible relevancy does that have to this trial?

(continued on next page)

THE COURT: I do not know, but, as I say, I am going to allow very liberal cross-examination here.

If you do not understand the question, say you do not understand it.

All right. Seat the jury.

(Jury present.)

THE COURT: I think the question is, Did you give those answers to those questions?

MR. BLOOM: I wasn't quite finished with the series, your Honor. I think in fairness to --

THE COURT: All right.

MR. BLOOM: I will resume in the middle.

BY MR. BLOOM:

Q "Question: And you did six months in North Carolina; didn't you?

"Answer: No, I did not.

"Question: How much time did you do in Newton, North Carolina?

"Answer: I wouldn't do no time in Newton, North Carolina. I did my time in Ashville, North Carolina.

"Question: Ashville, North Carolina, you did some time in Ashville, North Carolina?

"Answer: Yes, sir.

"Question: You forgot to tell us about that?

"Answer: I didn't forget. I wasn't asked."

Do you remember those questions and answers a couple o- weeks ago, in New York?

A Yes.

Q Is that correctly recorded here? Do you remember that?

A Yes, I remember that.

Q Particularly the answer to the question --

THE COURT: Objection sustained.

Q Did you do six months in North Corolina?

A Yes, I did.

Q Now, the bank robbery, Oak Point Avenue, what was your role in that bank robbery?

A What was my role?

Q Yes, sir.

A My role was to get the manager, snatch him, and run him to the vault, and if he didn't move fast enough, to beat him.

Q And that's what you did; right? You beat him?

A That's what I did.

Q You hit him over the head with a gun twice; didn't you?

A I hit him once.

Q How old a man was this?

A I don't know.

Q He was an old man with white hair; wasn't he?

A He had good -- He had white hair, yes.

Q Bruckner Boulevard robbery, the one you testified about a couple of weeks ago in New York, what was your role in that bank robbery?

A I jumped over the counter and got the money.

Q Did you hit anybody in that bank robbery?

A No.

Q This bank robbery, what did you do in this bank robbery?

A I jumped over the counter and got the money.

Q Pardon me?

A I jumped over the counter and got the money.

Q Did you fire a weapon in this bank robbery?

A No, sir.

Q Did you have a weapon?

A Yes.

Q Was it in your hand?

A Yes.

Q Was it in your hand at all times during the bank robbery, during your time in the bank?

A Yes.

Q What were you wearing during this bank robbery?

A What was I wearing? I don't recall exactly what I was wearing.

Q Were you wearing -- Did you pull your mask down over your face?

A Did I pull my mask down over my face? Yes.

Q Are you sure of that?

A Yes.

Q Was your mask like a knit cap, that you pulled down, what you described earlier with the eyes cut out?

A Right.

Q Were you wearing pink tinted sunglasses?

A No.

Q Were you wearing an Eisenhower-type jacket?

A No.

Q Was Phyllis Pollard wearing those things?

A I don't -- I don't recall what she had on. I told you, I don't even recall what I had on. I don't know what -- I don't know what somebody else had on.

Q Well, do you remember what kind of shirt, what kind of pants, what kind of shoes?

A That who had on?

Q You?

A I had -- I believe -- I believe I had on a pair of dark blue pants, black boots, black -- black shoe boots, and

-- and a leather -- and a leather jacket.

Q Were you wearing gloves?

A Yes.

Q Was Phyllis wearing gloves?

A Yes.

Q Are you sure of that?

A Yes.

Q Positive?

A Positive.

Q Did you -- Were you the -- Did you jump over the counter, towards the back of the bank, or toward the front of the bank?

A The back.

Q Were you carrying any kind of a shopping bag, or a bag for carrying money?

A I had a pillow case.

Q A pillow case?

A Right.

Q Did -- What color was the pillow case?

A I don't remember.

Q Was Phyllis carrying any bag for carrying the money?

A She was carrying a pillow case.

Q Do you remember what color pillow case it was?

A No, I do not.

Q How about brown paper bags, was anybody carrying brown or any kind of paper bags?

A No.

Q How much time did you spend in the bank, Mr. White, April 10, 1973?

A Approximately a minute and a half.

Q Now, was your gun -- What kind of gun did you have?

A A Browning high-powered 9 mm.

Q High-powered 9 mm.

Was it a light-colored gun, dark-colored gun?

A It was a light-colored gun or dark-colored gun?

Q Yes. Do you remember?

A It was the same kind that the one they showed me this morning.

Q A black metal, medium brown handle?

A Yes.

Q Did you point that gun at anyone?

A Did I point it at anyone?

Q Yes, sir.

A I pointed it at the tellers inthe bank, to tell them to back up.

Q And did they back up when you told them that?

A Yes, they did.

Q Did Phyllis fire a gun?

A Yes.

Q How many times?

A Once.

Q Did Twyman fire a gun?

A No.

Q And that's all the people -- Was Melvin Kearney in the bank?

A No.

Q Was Melvin Kearney in the car?

A No.

Q So to your best recollection, in fact, you know that only one shot was fired; right?

A Yes.

Q The bank in Cambria Heights, what was your role in that, on Linden Boulevard?

A I jumped over the counter and got the money.

Q Did you beat anybody up in that bank?

A No.

Q Fire any weapons at that bank?

A No.

Q Did you fire any weapons in the Oak Point Avenue bank robbery?

A No.

Q Now, Mr. Clarey asked you about attempting -- you pleaded guilty to attempted murder of police officers?

A Yes.

Q Now, the item to which -- the crime to which you pleaded guilty, do you know what class felony, class of felony that is? They're called in State Court, A Felonies, B Felonies and so on; right?

A I believe it's A-1 Felony.

Q How about a Class B Felony? Does that ring a bell?

A You mean, under -- I pleaded guilty to?

Q Yes, sir.

A Oh, I pleaded guilty to a Class B, right.

Q Do you know in a Class B felony whether or not the Judge can give you probation, if he wants to?

A I don't know. I think so. I mean, the Judge, you know, he can do anything, anything that he wants to.

Q In a Class A Felony, can he do anything he wants to, or does he have a limitation, that you know of?

A In a Class A Felony, you know, if you convicted, you know, you got to get a mandatory sentence of life..

Q Life is maximum? Is it fifteen years minimum? In other words, the best you can do if you plead guilty or are

found guilty on a Class A Felony in the State Courts is fifteen to life, is the best you can do; right?

A Right.

Q The worst you can do is twenty-five to life; isn't that right?

A Right.

Q Now, the incident as to which you pleaded guilty, did you commit that crime? Did you shoot a police officer?

A Did I shoot them?

Q That's right. Did you shoot at them?

A No.

Q Is it your testimony that you pleaded guilty to a crime that could carry a possible maximum punishment of twenty years, and you did not commit that crime?

A I was -- I was present in the apartment and it was -- it would have been no way I could prove that I didn't, and they told me that they would let me plead guilty in -- and combine another attempt murder, which I did commit. I accepted it.

Q When you say, sir, there is no way you could prove you didn't commit the crime, did your attorney explain to you that you don't have to prove anything in a criminal case? That the Government Always has to prove it?

A It wasn't a Government case.

Q I say "Government." This is this Government here, is United States of America in this case. In that, it's the State of New York, People of the State of New York?

A Yes.

Q I mean the Government, either way. Okay?

A Right.

Q Did your attorney explain to you that the State had to prove your guilt, rather than you having to prove your innocence?

A No. He just told me that he -- he could get me a plea.

Q And did you know in advance what you were pleading builty to?

A B Felony.

Q Forget that. In advance. At the time you pleaded guilty, do you know what you were pleading guilty to, and what your possible maximum punishment was going to be? Could be?

A B Felony, yes.

Q Years? How about years?

A I knew that a B Felony carried, you know, twenty-five years.

2 fls

(continued on next page.)

CROSS-EXAMINATION

BY MR. BLOOM: (Cont.)

Q What I am concerned about is you say you pleaded guilty, you didn't shoot at anybody, you were in an apartment where other people -- by the way, Fred Hilton wasn't there; was he?

A No.

Q Where other people were shooting at police officers; right?

A Right.

Q And you were concerned about being acquitted, although you hadn't done anything; right?

A Right.

Q What made you concerned about that?

A Because the -- because the officer said that he seen me shoot him.

Q And that wasn't true; was it?

A No.

Q Now, you pleaded guilty to that crime to cover another attempted murder of Police Officers; right?

A Right.

Q When did that crime take place, the other crime?

A March 6th of 1973.

Q Did you commit that crime?

A Yes.

Q You shot at police officers then?

A Yes.

Q So you pleaded guilty to something you didn't do to cover something -- that and something you did do?

A Right.

Q Right? Now, the robbery case that you have pending in Kings County, had you ever been arraigned on that, brought to Court?

A Yes sir.

Q And did you plead not guilty on that?

A Yes sir.

Q Who was your lawyer?

A I didn't have no lawyer. I represented myself.

Q You represented yourself?

A Yes sir, at the arraignment.

Q Did the District Attorney speak up on your behalf and explain your role as a government witness?

A- I wasn't -- see, at the time, you know, the Judge, you know, explained me that I have -- I have a right to have an attorney, and I toldhim that I didn't want no -- I didn't want no attorney, that -- at this time I wanted to, you know, represent myself and, you know, for arraignment purposes.

Q Did you contact or did you ask somebody to contact either Mr. Kenneth Bruce or John Curly on your behalf, so that they could be brought there in Court with you?

A I didn't have John Curly or Kenneth Bruce at the time.

Q Did you make any effort to get an attorney of your own choice from the day you were arrested?

A Make --

Q At any time after September 17th?

A Any effort?

Q Yes. What did you do? Did you make any phone calls, write any letters, ask anybody personally to assist you in getting an attorney?

A Yes.

Q What did you do?

A I asked people. I even spoke to you.

Q You asked me; right?

A Right.

Q What did you ask me to do?

A To help get me a lawyer.

Q Did you give me a specific name?

A Yes.

Q What name was that?

A Kuntsler.

Q And did in fact he get in touch with you?

A No.

Q Did you write to him?

A No.

Q Did you get --

A Yes. I did write, yes. I did write.

Q Did you get a message from me about his wishes in representing you?

THE COURT: If you pursue this, I will take this outside the hearing of the jury. If you intend to pursue it.

MR. BLOOM: I do, your Honor.

THE COURT: The jury may be excused.

(The following occurred in the absence of the jury.)

THE COURT: What is the relevancy?

MR. BLOOM: May I also ask that the witness be excused, your Honor?

THE COURT: Will you please take a position outside of the doors of the Courtroom?

I saw you rise to object and I want the transcript -

MR. CLAREY: I was about to, your Honor. I think Mr. Bloom was about to begin to testify here.

THE COURT: Well, I did not understand that to be the objection. I do not understand the relevancy.

(Witness steps outside of Courtroom.)

THE COURT: I know the point that Mr. Bloom was trying to make but I do not see the rlrelevancy in this trial.

MR. BLOOM: The point I'm trying to make, your Honor, is that Mr. White indicated in past trial, I believe the trial that I was involved in, Chesemod trial, that he pleaded guilty because he couldn't -- among other reasons, he pleaded guilty because he couldn't get a lawyer of his own choice, and he did it out of desperation.

It is a fact and I believe I can ask leading questions in that area or in any area, that I did communicate to him that Mr. Kuntsler was willing to represent him, that he would be able to see him in a few days, and that Mr. White's position that he pleaded guilty to get things over with is quite contrary to the fact.

And I was -- perhaps I should have done that -- those questions first before asking him questions about my assisting him in getting an attorney.

THE COURT: Is that the full offer of proof in

this area.

MR. BLOOM: Yes.

THE COURT: Objection sustained. It is totally irrelevant.

Seat the jury.

(Witness present.)

(Jury present.)

THE COURT: You may proceed, Mr. Bloom.

BY MR. BLOOM:

Q Let's leave the area of your convictions for a moment.

One of your convictions you went up to Elmira and then Comstock; is that correct?

A Yes.

Q Is it fair to say you decided that Comstock was not the place for you?

A Was not --

Q You wanted to get out of Comstock and go someplace else?

A Yes.

Q And in answer to a question by Mr. Clarey, you said you faked insanity; right?

A Yes.

Q How did you do that?

A How did I do that?

A 110

7 White-cross

Q Yes. What did you do?

A I went to see the institution psychiatrist and I told him I was God.

Q You told him you were God?

A Yes.

Q Did you tell him that about a month before you saw him you were thinking of killing people, killing inmates in there, who were trying to take your manhood away from you?

A Yes, I did.

Q Tell him that you have a mother and father, that you only honor Allah, A-l-l-a-h?

A I don't know. I don't know if I said that.

Q The doctor you were talking about, is that Dr. Ralph Fredman, F-r-e-d-m-a-n?

A I don't know his name.

Q You never knew his name? Do you know his name now?

A I mean, you know, like this could be, you know the doctor that you speaking about, but I don't remember this is his name.

Q Is it your testimony that you never knew the name of the doctor to whom you spoke at Comstock?

A I mean, I spoke to more than one.

Q How many did you speak to?

A I spoke to, I think it was, three.

Q At Comstock?

A Yes.

THE COURT: At the same time or at different times.

THE WITNESS: At different times.

Q Did you tell those doctors that you are better than they were and that you have more brains?

A Yes, I told them that.

Q And that their brain was only 6 ounces and yours was 7 and a half ounces?

A Yes.

Q That was all an act; right?

A What?

Q That was all an act; is that correct? That was all lies you were telling them? You didn't really believe those things; did you?

A That's what I was taught.

Q Well you told them -- who taught you that?

A Who taught me that?

Q Yes.

A A group called The Five Per Centers.

Q They taught you that you are better than -- was it white people?

A Yes.

Q Because your brain is larger?

A Not only because of that.

THE COURT: You tell me when it is convenient to suspend. I think the lunches have arrived.

MR. BLOOM: All right. I think now is a good time, your Honor, before I get too deeply into this.

THE COURT: We will suspend for lunch. I was wrong. They haven't arrived, but they will be here soon. We will take one hour. The case will continue at 2 o'clock.

You may step down.

The jury is excused.

(The following occurred in the absence of the jury.)

THE COURT: 2 o'clock, gentlemen.

(Luncheon recess taken.)

n PM

AFTERNOON SESSION

MP:jm
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THE COURT: All right, seat the Jury, please.

Bring the witness in, please.

AVON WHITE, called as a witness, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

(The Jury is in the Jury Box.)

THE COURT: You may proceed, Mr. Bloom.

CROSS EXAMINATION

BY MR. BLOOM (continued):

Q Mr. White, we were beginning to talk about your transfer from Comstock to Mattewan State Hospital for the Criminally Insane.

Let me just start over on that, I have a couple of questions. Did you tell the doctor at Comstock about a month before you spoke to him you were thinking of killing particular inmates up at Comstock, inmates trying to take your manhood away from you?

A Yes.

Q Did you believe that to be the truth when you told it to the doctor?

A Yes.

Q Did you also tell the doctor that you have a mother and father and you don't honor them, you only honor Allah?

A I don't remember telling him that.

Q Could you look at this page, Mr. White, of Exhibit --

THE CLERK: Three.

MR. BLOOM: Thank you.

Q It is marked there.

Is that in any way -- does that refresh your recollection as to whether or not you told the doctors that you don't respect your parents, you only horor Allah?

A I don't even talk that way, the way it is phrased here.

Q It doesn't refresh your recollection?

A No.

Q That you said that?

A No.

Q Did you tell those doctors that you are better than they are because you have more brains?

A Yes.

Q Did you believe that to be true at the time you told it to the doctors?

A At the time I believed it.

Q That you believed was the truth?

A Yes.

Q Did you tell the doctors that you came to see

why they didn't do their job and they, the doctors, are trying to disinclude you, that they, the doctors, can't do anything for you, and if they don't do their duty their lives must be taken and you, Avon White, are the giver and taker of life? Did you tell that to the doctors?

A I don't remember saying Avon White part.

Q You know who you are, right?

A Yes.

Q Who are you?

A Avon White.

Q You are not George or anybody named Peterson?

A No.

Q Those are names you took so that you wouldn't get high bail, right?

A Excuse me?

Q Those are names so your bail wouldn't be high?

A Yes.

Q You know you are Avon White?

A Yes.

Q With the exception of using the words "Avon White," did you tell the doctors those other things like if they didn't do their job their life must be taken?

A Yes.

Q Did you tell them that?

A Yes.

Q Did you believe that to be true when you said that?

A Yes.

Q So up to now everything you said to them wasn't an act, you believed everything you told them, you weren't trying to fool them? You weren't faking insanity?

A I was faking.

Q When you say faking, do you understand faking to mean not telling the truth?

A Right.

Q Will you explain to the Jury what you mean by faking insanity?

A When I told them that I was God --

Q You didn't believe that to be true?

A No.

Q Is that the only thing you told the doctors that you believed to be untrue?

A Well, you know, like, I don't exactly remember everything that I said to him. It's been six years now. My memory ain't that good.

Q Do you remember telling the doctors that you, without giving them your name, do you remember sitting there and telling one or more doctors that you were the giver and taker of

life?

A Yes.

Q Did you believe that to be true at the time you said it?

A That's what I was taught.

Q Did you believe it to be true at the time you said it?

A Yes.

Q So at that point when you said that you weren't faking that either?

A No.

Q That was real to you, right?

A It still is real to me.

Q You are the giver and taker of life?

A Yes.

Q That is real to you?

A Yes.

Q Did you tell the doctor that you had been watching him and you were the all-seeing eye, did you tell that to him?

A Yes.

Q Did you believe that to be true at the time you said it to him?

A No.

Q That was a lie? That was a fake, right?

A Right.

Q Did you tell him you were the Lord and the savior of the world and you were the almighty God Allah, the supreme being; did you say that to the doctors at Comstock?

A Yes.

Q Did you believe that to be true at the time you said it?

A No.

Q That was a lie, right?

A Yes.

Q Did you tell them that you were always the savior, saving the world and that you would always be here, you will never die; did you tell them that?

A Yes.

Q Did you believe that to be true or was this a lie?

A A lie.

Q Did you tell the doctors that all your children talked to you and you see them all? Did you tell the doctors that you rule the earth and you made the rain last night?

Did you tell that to the doctors at Comstock in order to get to Mattewan State Hospital for the Criminally Insane?

A Yes.

Q Was that the truth at the time you said it or do you believe it to be a lie?

A I was faking.

Q Do you remember testifying a couple of weeks ago at Melvin Carney's trial in the Southern District of New York in Manhattan?

A Yes.

(Pause.)

MR. BLOOM: Your Honor, I am waiting for Mr. Clarey to get the page.

MR. CLAREY: Go ahead.

Q You were questioned by Mr. Berman, the attorney for Mr. Carney:

"Question: Did you tell Doctor Freedman or Fredman that you made the rain last night?

"Answer: Yes.

"Question: Did you believe that you had made the rain the previous night?

"Answer: Did I believe I had made the rain?

"Question: Yes.

"Answer: I wasn't speaking of the rain, you know, you know...ask about the physical --

"Question: What type of rain do you mean?

"Answer: The wisdom."

Do you remember those questions and answers a couple of weeks ago?

A Yes, I remember.

Q When you told Doctor Fredman about making rain, is it your answer it wasn't a fake, you meant something else by rain?

A It was a fake. If I meant something else it had to be a fake.

Q Did you tell the doctors you had the power to do anything you wanted to do, build or destroy, that you are indeed the giver and taker of life?

A Yes.

Q Was this a fake or did you believe that to be true?

A Which part are you referring to?

Q Any part. Let's take one at a time.

Do you believe you have the power that you could do anything you wanted to do?

A Did I believe that?

Q When you told that to the doctor, did you believe that to be true or was that part of your act?

A I thought I had the power to do anything I wanted to do.

Q Anything?

A Yes.

Q You didn't want to be in prison at the time, is that correct?

A Yes.

Q You didn't want to be in Mattewan State Hospital?

A Yes.

Q You preferred Mattewan to Comstock?

A Right. Because Mattewan is not a prison.

Q Pardon?

A Mattewan is not a prison.

Q You just can walk in and out as you wish?

A Can I walk in and out as I wish?

Q That's right.

A I can walk around better than in Comstock.

Q Mattewan for the Criminally Insane is not a prison?

A No.

Q Could you have left the premises and did you ever leave the premises voluntarily, Mattewan State Hospital, by walking out the front door?

A I never left the front door but the back door.

Q Did you escape?

A No.

Q They took you back to Comstock?

A No.

Q How did you get out?

A I was going to work.

Q Working where?

A I used to work in a storehouse which was off the premises and I worked in the training academy where they trained officers.

Q Were you still a prisoner at the time?

A Was I?

Q Yes. In the custody, control of New York State Department of Correctional Services.

A At that time I was a patient.

Q Is it fair to say that in your own view in the spring or so of 1968 you were not mentally ill, is that correct?

A (No response.)

Q You were just faking that to get into a lighter detention?

A A lighter detention?

Q Lighter detention. You know the word detention, don't you?

A Yes, I know the word.

Q Is that your testimony then, you were not in your own opinion mentally ill, that that was all a fake?

A Yes.

Q Is it fair to say, sir, that you fooled that doctor or all those doctors at Comstock that sent you to Mattewan?

A I don't think I fooled them.

Q You think they were letting you go even though they knew you were a fake?

A No, I think they thought maybe there might be something wrong with me because I was telling them that.

Q You set out to fool them to go to Mattewan, right?

A Yes.

Q You went to Mattewan, right?

A Yes.

Q And not only did you see doctors who were associated with the prison at Comstock, but they assigned two doctors to you, Doctor Weiss and Doctor Greenberg, is that correct?

A I don't know the names.

Q Two separate doctors not associated with the prison?

A Yes.

Q Did you go to Court before Judge O'Brien and have a hearing as to your mental ability?

A I didn't go to Court. The Judge came in the

institution.

Q Did you have a hearing in the instututution?

A Yes.

Q Was there testimony, the doctors took the witness stand and swore to tell the truth and testified?

A No.

Q You didn't see any of that?

A No.

Q Did you testify at your own hearing inside the institution?

A The only thing I remember was, you know, he asked me, the Judge asked me my name. And asked me, told me that I was committed to Mattewan from one day to life.

Q One day to life?

A Right.

Q He didn't tell you you were committed for the rest of your term, your jail term under the youthful offender sentence?

A No, he told me one day to life. That was on the commitment papers that they gave me.

Q Well, Mr. White, let me show you a page of Exhibit 3. It is an order entitled, "Order of Hearing," signed by Judge O'Brien.

Show me where it says one day to life?

A It don't say it. It don't say until the day of my sentence neither.

Q It doesn't say what term it is?

A No.

Q What was your sentence at the time?

A My sentence was three years.

Q It is your recollection that they sentenced you to one day to life under a three year sentence, is that correct?

A That's what was on the commitment papers they gave me.

Q Have you ever seen commitment papers that look different from what is in front of you?

A It was different from this. It had on there that I recall that upon being examined by two psychiatrists that the person named above, blah-blah-blah, was found insane and committed to Mattewan for the Criminally Insane for one day to life. Something like that.

Q Look at Page Nine of the document, does that look like a copy of it?

A No.

Q What is the title of that page?

A Certificate of justice -- judge relating to person service State of New York, County of Washington.

Q What is the title of it?

THE COURT: What is the purpose of this, Mr. Bloom?

MR. BLOOM: To show that he is indeed making up another story.

THE COURT: Objection sustained. Please go to another area.

MR. BLOOM: May I make an offer of proof at side bar?

THE COURT: The Jury may be excused.

MR. BLOOM: Rather than put the Jury to the inconvenience, can we do it at side bar?

THE COURT: The Jury may be excused.

(The Jury left the Courtroom.)

(continued on next page)

MR. BLOOM: May I ask the witness be excus(

THE COURT: Will you please take a position outside the courtroom door.

Did you mark the document -- Let the record show that the defendant lunged at the witness while he was leaving the courtroom.

I am going to ask that the defendant sit at one of the chairs closer to the bench, and at a further distance to the exit so he doesn't have access to the witness.

MR. BLOOM: May I have a moment with Mr. Hilton, your Honor?

(Pause.)

MR. HILTON: Your Honor, with regard to my questioning in the area of the page I showed to the witness--

THE COURT: What Exhibit is that?

MR. BLOOM: Exhibit 3. Exhibit 3, your Honor. There are some pages numbered, and some not. They are not numbered chronologically. About a third of the way in on the top of the particular page, it says number 9. And part of that page is an Order of Commitment.

THE COURT: Do you have a certified copy of the Order of Commitment?

MR. BLOOM: No, sir. I have what was given to me in the trial of Mr. Hilton by the United States Govern-

ment in the Southern District. As a matter of fact --

THE COURT: You talk about reading from a document that isn't in evidence --

MR. BLOOM: I am not reading.

THE COURT: You asked the witness to read from the document.

MR. BLOOM: Yes.

THE COURT: Is that proper?

MR. BLOOM: Without objection, it is proper.

THE COURT: Oh.

MR. CLAREY: The only objection I have is to relevancy.

THE COURT: What is the relevancy?

MR. BLOOM: I asked him to characterize the Order of Commitment. I didn't ask him to read out loud from it.

THE COURT: I will take an offer of proof. What has this to do with credibility?

MR. BLOOM: This man is either crazy or a liar. Okay? The man is taking a position in the first trial in which he testified in United States against Fred Hilton and Joanne Chesimard in the Southern District that it was a game he ran on the psychiatrists. He now is taking the position he must have been crazy. Now he is taking the position that some of the document is true.

I was saying that, it's not a fact, some was a fake. He was changing his position. He is telling us that his Order of Commitment, he took the risk -- the implication to the jury is of going to Mattewan as a lighter institution, he took the risk of a one year to life commitment, and that was okay with him. That is a fact, as your Honor, I am sure, is aware. That kind of thing doesn't happen without other proceedings accompanying. This is a commitment, and it does not so state, and to leave that impression is unfair.

THE COURT: Your questions are purely argumentative. You showed the witness the document, and you ask where it says one day to life. When he says he can't find it, then you start asking him to read it. That is purely argumentative.

MR. BLOOM: No, I asked him to read it before. I gave it to him to look at it.

THE COURT: Seat the witness, and let's get on with the case. Seat the jury.

A V O N W H I T E , resumed the stand and further testified as follows:

(The jury is in the jury box.)

MR. BLOOM: Your Honor, I would like to offer Exhibit 3 into evidence.

THE COURT: Any objection?

MR. CLAREY: Objection, irrelevant.

THE COURT: Let it be marked.

MR. CLAREY: The entire Exhibit?

THE COURT: Just the Order?

MR. BLOOM: No, the entire Exhibit.

THE COURT: May I see the Exhibit?

(Pause.)

THE COURT: Objection sustained in the form offered. If counsel wishes, he may make a selective evaluation and offer the documents that he feels are relevant.

MR. BLOOM: I would offer all the aspects that are diagnostic in nature.

THE COURT: I won't take it in that form either. You show me the particular document, and you mark out the portions that you say are relevant, and I will rule. I won't take a scatter-shot offer as you make.

Next question.

MR. BLOOM: The papers are not numbered. I have the pages noted, but I have no way of describing them.

THE COURT: The jury may be excused. I will make my ruling outside the ruling of the jury.

(The jury left the courtroom.)

MR. BLOOM: If your Honor has before you the document, just so we understand, the first page I have

is dated February 24, 1968. Is that when your Honor has the first page?

THE COURT: Yes.

MR. BLOOM: I am not offering it, I want to start in the right place.

THE COURT: Go ahead.

MR. BLOOM: I am offering page 4, which is the letterhead of the State of New York Department of Hygiene, dated 7/6/68, signed by Dr. Fredman, and it states: "I wish to inform --" It is addressed to the Superintendent at Comstock, Mr. Conboy -- "-- as to Avon White, I wish to inform I examined the above inmate psychiatrically, and found he is mentally ill, and should be transfered to Mattewan State Hospital.

THE COURT: Any objection to that?

MR. CLAREY: No objection.

THE COURT: What Exhibit is this?

THE CLERK: 3.

THE COURT: Mark 3-A in evidence.

THE CLERK: So marked.

MR. BLOOM: The following page, your Honor, the entire following page.

THE COURT: Any objection?

MR. CLAREY: One dated July 6, '68?

MR. BLOOM: Yes.

MR. CLAREY: Your Honor, I'll withdraw my consent. I would object on relevancy. I don't see the relevance of putting this material in.

THE COURT: Objection overruled.

You are talking about the last one I admitted?

MR. CLAREY: Dr. Fredman isn't here. He can't be cross-examined.

THE COURT: Do you challenge the genuineness of the document? You are the one who produced it.

MR. CLAREY: No, your Honor, I don't challenge it. On hearsay and relevance.

THE COURT: Overruled. I will allow it.

It may have something to do with the ability of the witness to tell the truth. I think it is far-fetched, but, as I said, I am giving the defendant wide latitude. Normally, I would say he should bring in expert testimony on the issue, but the defendant prefers to do it this way. I do not want him to claim that he was not given every opportunity to prove that the witness was incapable of telling the truth.

Next, Mr. Bloom.

THE CLERK: Page from Government's Exhibit 3 marked Government's Exhibit 3-B in Evidence.

(So marked.)

MR. BLOOM: The following page, your Honor, is a diagnosis by a Dr. Ofner, who is the supervisor of Dr. Fredman. That later develops -- the following page makes that clear, your Honor.

MR. CLAREY: The same objection, your Honor.

THE COURT: What do you want in? The examination?

MR. BLOOM: We are talking about the page, your Honor, that's report of physician?

THE COURT: I have application for order to examine?

MR. BLOOM: No. It's the page before that, your Honor. In the matter of the commitment to Mattewan State Hospital of Avon White.

THE COURT: You point it out to me. Show it to him, Mr. Clerk.

MR. BLOOM: It has a No. 3 on the top of it, your Honor. I'll try to point it out to you.

It's before this (indicating). It's the page just -- it's not in this. It's not in what you have, your Honor.

MR. CLAREY: I do happen to have it. This is the report of physician? Proceedings for commitment

of mentally ill prisoners?

THE COURT: Report of physician? What does it say?

MR. CLAREY: I'll show you my copy, your Honor.

THE CLERK: Is this it (indicating)?

MR. CLAREY: That's it.

THE CLERK: It's marked 3-B.

THE COURT: It's already marked.

MR. BLOOM: We missed one then. Before that.

THE COURT: What is 3-A?

THE CLERK: 3-A is the psychiatric report.

MR. BLOOM: Missed one before that.

Just so we understand, your Honor, the first one I offered was -- looks like this (indicating). It's a page on the letterhead of State of New York, Department of Mental Hygiene, containing Dr. Fredman's-- do you have it?

MR. CLAREY: That looks like it.

THE COURT: Mark this 3-C. Go ahead. Next.

THE CLERK: So marked as Government's Exhibit 3-C in Evidence.

(So marked.)

MR. CLAREY: I don't think it should be marked

as a Government Exhibit.

THE COURT: That is right. Mark them all defendant's exhibits then.

THE CLERK: Yes, your Honor.

THE COURT: All right, cancel 3-A, 3-B and 3-C. Mark them defendant's A, B and C.

THE CLERK: So marked.

(Defendant's Exhibits A, B, and C marked in Evidence.)

THE COURT: Go ahead. Next.

MR. BLOOM: The next is two pages which are both -- includes -- it's numbered page 4. First part is application for order to examine. The second page is order to examine and then on the following page, which is part of the same document, is examination by physicians, and those are the two physicians appointed, your Honor, Doctor -- two outside physicians.

THE COURT: All right. Mark it D.

THE CLERK: Two pages marked Defendant's D in Evidence.

(So marked.)

THE COURT: Next.

MR. CLAREY: Same objection.

MR. BLOOM: The next, your Honor, is numbered

page 8 at the top.

THE COURT: I have no numbers on mine. Just read what it says.

MR. BLOOM: O.K. The first part of the page is entitled order of hearing. Two-thirds of the way down is entitled decision of Court after hearing, where Judge O'Brien, Judge of the County Court of Washington County, finds the defendant Avon White to be mentally ill and committed him to an institution for treatment of mental disease.

THE COURT: Let it be marked E.

THE CLERK: So marked in Evidence as Defendant's Exhibit E.

(So marked.)

THE COURT: Next.

MR. BLOOM: Two pages later, your Honor, the order of commitment signed by Judge O'Brien, finding the -- the judge is satisfied that the above alleged mental person is mentally ill and so on.

THE COURT: F.

THE CLERK: Defendant's F so marked in Evidence.

(So marked.)

THE COURT: Go ahead.

MR. BLOOM: The next is a document entitled -- I can't pronounce the word. It's spelled a-m-a-m-n-e-s-i-s, which is probably the first evaluation at Mattewan, including a diagnostic impression and recommendation.

MR. CLAREY: Your Honor, these terms, how can the jury possibly consider these documents when they have no idea what these terms mean? They could possibly misinterpret these terms.

MR. BLOOM: I'll continue, your Honor. This is a three-page document and I am particularly interested in the very last paragraph, which is the diagnosis, which reads: "Staff conference accepted diagnosis on September 20, 1968, as psychosis with psychopathic personality paranoid and reactive features."

THE COURT: How does that bear on his ability to tell the truth?

MR. BLOOM: Because he's mentally ill, your Honor.

THE COURT: How do you know that? There are many mentally ill persons that can tell the truth.

MR. BLOOM: The jury is entitled, your Honor, in their own experience, to determine what if any weight they want to attach to the mental illness.

THE COURT: In other words, they -- well, objection sustained.

Without -- if you bring in an expert to tell us what it means, I will allow it before the jury.

MR. BLOOM: I would ask your Honor at this time to authorize expenditure under the Criminal Justice Act for me to secure the services --

THE COURT: It is granted, yes. That should have been done first, if you intended to use this.

MR. BLOOM: I had no problem getting the entire document in in the trial in New York, in the Southern District, your Honor.

THE COURT: Then you should try your case in the Southern District.

MR. BLOOM: Perhaps so, your Honor. There are differences.

THE COURT: Here I use my discretion and I do not rely on what someone else does. The mere fact that someone else lets you throw in a ton of stuff that is totally irrelevant does not mean you will get away with it here.

I rule on the matters as I see them and I call them as I see them, not as you see then.

MR. BLOOM: I submit to your Honor the diagnosis,

the diagnostic portions of psychiatric examinations are admissible, are relevant for a jury's consideration as to a witness' ability to understand and relate the truth.

THE COURT: It is totally irrelevant without an opinion by someone who can testify as to what this history and this diagnosis means and how it bears on the ability of the witness to tell the truth.

I see nothing in here that says that he cannot tell the truth.

The only thing that it says on diagnosis is, "Staff conference accepted the diagnosis on September 20, 1968 as psychosis with psychopatic personality paranoid and reactive features."

Is that the part you want in? Mr. Bloom?

MR. BLOOM: Yes, sir.

THE COURT: All right. Objection sustained.

MR. BLOOM: I would next offer, your Honor, the following page.

THE COURT: Let me mark this for identification. This will be 3-A for Identification?

THE CLERK: No. G.

THE COURT: This has not been admitted into evidence.

THE CLERK: Yes, your Honor.

THE COURT: You say it's three pages, right?

MR. BLOOM: Yes, it is, your Honor.

THE CLERK: So marked, three pages from Government's Exhibit 3, marked Government's Exhibit 3-A for Identification.

(So marked.)

THE COURT: Next.

MR. BLOOM: The next page, your Honor, which is entitled Clinical Summary, again has the same diagnosis, among other things. It is dated March -- well --

THE COURT: Objection to that is sustained. Mark this.

MR. BLOOM: I did not hear an objection to that, your Honor.

MR. CLAREY: My objection is to any page.

THE CLERK: So marked.

THE COURT: I heard a blanket objection by the Government.

THE CLERK: One page from Government's Exhibit 3 marked Government's Exhibit 3-B for Identification.

(So marked.)

MR. BLOOM: All right. Just to clarify, I

had offered the entire document, all the documents in this folder. That was denied. I offered the diagnostic portions. That's all I could find as to the diagnostic portions.

THE COURT: The document as a whole is too general and I won't rule on it in that manner. I will rule on specific items that are offered.

All right. Are you ready to proceed now?

MR. BLOOM: Yes, I am.

THE COURT: All right. Seat the jury.

Mr. Clerk, there is the balance of 3. Mark that. Let the record show that the balance of 3 that I refused to admit into evidence is now marked 3. Staple them and keep it together.

THE CLERK: Yes, sir. So marked.

(So marked Government's 3 for Identification.)

(Jury present.)

MR. BLOOM: Your Honor, may I read to the jury the relevant portions that are in evidence?

THE COURT: Yes.

MR. BLOOM: Dated July 6, 1968, memorandum from Dr. Ralph Fredman, Chief of Psychiatric Services, New York State Department of Mental Hygiene, to Superintendent J. Convoy, re: Avon White, No. 26253.

"I wish to inform you that I have examined the above inmate psychiatrically and find that he is mentally ill and should be transferred to Mattewan State Hospital," signed Ralph Fredman, M.D."

And in a psychiatric report by the same Dr. Fredman --

MR. CLAREY: Same objection. Where is the --

MR. BLOOM: It's in evidence, your Honor.

THE COURT: I allowed it in evidence. I have already ruled on it, Mr. Clarey.

MR. BLOOM: Under recommendations, "In my opinion, this young man is mentally ill and should be transferred to Mattewan State Hospital for further care and treatment."

Next item, your Honor, is signed July 6, 1968 by Dr. Ofner, who says that he is the "...physician of Great Meadow Correctional Institution, Comstock, that in his opinion Avon White, No. 26253, a prisoner confined in the aforesaid institution, is mentally ill."

Under Recommendations, "In my opinion, this man is mentally ill and should be transferred to MSH," which I assume is Mattewan State Hospital, "...for further care and treatment."

In a report, examination by two assigned physicians, Dr. Greenberg and Dr. Weiss, Drs. certify that: "They have with care and diligence personally observed and examined on the date of the certificate, namely July 9, 1968, Avon White, now residing at the Great Meadows Correctional Institution, and as a result of such examination find and hereby certify to the fact that he is mentally ill and a proper subject for custody and treatment in the Mattewan State Hospital as a mentally ill person under the provisions of the statute. I have formed this opinion from the history of the case and my examination of the patient as given above."

Finally, your Honor, in the certification by the Judge, decision of Court after hearing, "A hearing having been had upon the application of J. Convoy, Superintendent, Order of Commitment of the said person to an institution for custody and treatment of the mentally ill, on the 12th of July 1968, testimony having been taken as required by law, I do hereby decide that the said Avon White is mentally ill and should be committed to an institution for the treatment of mental diseases."

CROSS-EXAMINATION

BY MR. BLOOM:

Q Mr. White, you heard me read those statements. Were you ever informed that you had been certified as mentally ill by four doctors, by a judge, before you went to Mattewan?

A I was informed by three doctors and a judge.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. BLOOM (Contd):

Q Is it correct to say that in your opinion, what you tried to do is although you felt you were not mentally ill, you set out to convince people that you were, to get yourself a break?

A To get myself a break?

Q A break, yes. An easier time of it?

A No.

Q That's not true?

A No.

Q You tell us what you were doing.

A Well --

Q By going and faking insanity?

A By going and faking insanity, my reason was, you know, because, you know, at the time I was -- I was 16 years old and I was in a -- I was in a maximum security prison, you know, with -- with hardened criminals that you know -- that -- and officers that was, you know, beating on me, you know, and -- and people in there which was trying to, you know, take my manhood from me, you understand. And I was not about to, you know, stay there under them conditions. So I went to Matteawan.

THE COURT: By taking your manhood, are you talking about attempted homosexual acts?

THE WITNESS: Yes, sir.

THE COURT: That's what you're talking about.

THE WITNESS: Yes, sir.

BY MR. BLOOM:

Q That didn't happen in Matteawan; right?

A No, sir. It did not.

Q Did it -- did the orderlies and the people who work there did not in any way -- did not in your experience in any way use some of the inmates or patients in homosexual relations?

THE COURT: Objection sustained.

Q Now, is it fair to say that as you sit there now, you would do almost anything to avoid that kind of situation again?

MR. CLAREY: Objection. Argumentative.

THE COURT: Overruled. I will allow it.

If you can answer that question?

THE WITNESS: Repeat that, please.

Q As you sit there now, as a witness in a trial, is it fair to say that you would do almost anything to avoid getting yourself in a similar situation again?

A No, sir, I would not do anything.

Q Are there things you wouldn't do? Would you lie?

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A No, sir, I would not.

Q Did you lie when you gave false names so that your bail would be reduced or you would get a low bail and you wouldn't have to sit in jail? Did you do that?

A Yes, I did.

Q When you went to Matteawan State Hospital, did you speak to doctors there, too?

A Yes, sir.

Q Is it fair to say --- when did you get there? what month did you get there?

A I got there July 16, 1968.

Q So you wanted to stay there; right?

A Did I wanted to stay there?

Q For a while anyway; right?

A Yes, sir.

Q At least until it was time for your parole board meeting; right?

A Approximately that.

Q Did you tell the doctors at Matteawan State Hospital that you are married to Allah, that you have special powers, and that you're also the sone of Allah?

A Yes.

Q Was that the truth at the time you said it or was that a lie?

THE COURT: Sustained as to form.

Did you believe --

Q Did you believe --

THE COURT: -- what you were saying?

THE WITNESS: I believed, you know, that the teachings that I was taught.

THE COURT: No. Listen to the question, please. Please reframe it.

MR. BLOOM: Yes.

BY MR. BLOOM:

Q Did you believe? Let's go one thing at a time.

When you told the doctors at Matteawan that you were married to Allah, did you believe that to be the truth?

A I was taught that.

Q Sir, at the time you said it in July of '68, when you were telling it to human beings, people, did you believe you were telling them the truth or did you believe you were not telling them the truth?

A I told them what I was taught.

THE COURT: Did you believe it to be true?

THE WITNESS: Yes.

Q You believe it to be true so that wasn't a

game when you told them that, that was you were telling them the truth; right?

A I mean, you know, it wasn't -- I learned that, you know, later, that wasn't the truth. But --

Q Right then when you told it to them, did you believe it to be the truth and you already answered yes, you did believe it to be the truth; right?

A Right. Right.

THE COURT: Mr. Bloom's questions refer only to the time you said it.

THE WITNESS: Right.

THE COURT: Did you believe it then to be the truth?

THE WITNESS: Right.

THE COURT: Am I properly --

MR. BLOOM: Yes, your Honor.

THE COURT: -- and accurately trnsmitting your question?

MR. BLOOM: Exactly.

BY MR. BLOOM:

Q Did you believe it to be the truth when you told them that you were the sone of Allah?

A Yes.

Q Did you believe it to be the truth when you

told them you could destroy the world?

A Yes.

Q You believed that was true?

A Yes.

Q Do you believe that now?

A No.

Q When did you stop believing that?

A When I grew up.

Q When did you grow up?

A When did I grow up?

Q Yes, sir, when did you grow up?

A When I got out of -- of Comstock.

Q And when you got out of Comstock, after you grew up, that's -- after that you robbed four banks?

A Right.

Q You tried to shoot police officers in the Bronx; right?

A Yes.

Q And you were with these two people when Melvin Kearney and Robert Hayes also tried to shoot some police officers on September 17th?

A Right.

Q And you pleased guilty to attempted murder; right?

A Yes.

Q This is all after you grew up; right?

A Yes.

Q After you grew up, did you also commit a robbery in Brooklyn?

A Yes.

Q Did you also commit a robbery in Queens?

A Yes.

Q Did you also commit an attempted murder in Queens?

A No.

Q You did not do that?

A No.

Q Those other things were all done though after you gew up; right?

A Right.

Q Did you beat the bank manager over the head in Oak Point Avenue, after you grew up?

A Yes.

Q Did you steal a car from Mr. Edgar after you grew up?

A Yes.

Q What does growingup mean to you? What do you mean when you say "grow up"?

A What did I mean, you know, when I -- when I -- I realized you know, that that stuff I was talking and -- at that time, you know, was a fantasy, you know, and when I left Comstock, you know, I had a -- a lot of animosity in me because of the fact that they was beating on me in there and I was young and they didn't teach me anything in there and, you know, I went the wrong way again.

Q When you spoke to the two doctors who were assigned from the outside, did you tell them that you heard voices when you were alone?

A Yes.

Q Did you tell them also that those voices are people speaking clearly but not to you?

A Yes, I did.

Q Was that the truth or was that a lie?

A It was a lie.

Q You didn't ever hear any voices, did you?

A I heard voices but you know, like it was somebody that wasn't, you know, talking to me directly but they was, you know, in -- existing.

Q So when you told -- are you saying that when you told the doctors that you heard voices, when you were alone --

A Right.

Q -- you meant, well, alone but maybe the other end of the room there were some people talking?

A Right.

Q Is that what you meant?

A Right.

fols. (Continued on next page.)

CROSS-EXAMINATION

BY MR. BLOOM: (Cont.)

Q Did they ask you a lot of questions about hearing voices? Did they ask you that, what do you mean by hearing voices?

A No, they didn't ask me that.

Q They dropped it right there, these two psychiatrists, they just dropped it right there, right?

A No. They didn't go into -- any further. They just asked me, you know, were they talking to you? I say no.

Q Okay. Let's move along.

You set out to fool the doctors. You began -- it was in your mind to fool the doctors at Comstock so you could get to Matteawan, right?

A Yes.

Q ANd you wound up in Matteawan, you fooled the doctors, three or four of them, and you fooled the judge, right?

A Yes.

Q And you continued to fool the doctors at Matteawan, right?

A Right.

Q In fact, you fooled me, didn't you? Shortly

after September --

MR. CLAREY: Objection.

THE COURT: Objection sustained.

Q Now, when you were arrested, September 17, 1973, last year, right then that day you agreed to cooperate with the FBI, right?

A I didn't, you know, actually agree, you know, to cooperate.

Q You gave them a very long statement, didn't you?

A Yes, I did.

Q As to your involvement in various crimes, right?

A Right.

Q Now, when did you first meet me?

A I don't know when I first met you.

Q About maybe eight or ten days after your arrest?

A Approximately two weeks.

Q And did we meet in the detention area of the Bronx Courthouse?

A Yes.

Q And was -- were we in the company of one or two other lawyers, plus Melvin Kearney and Robert Hayes?

A One lawyer.

Q Mr. Cohn, STanley Cohn?

A Right.

Q Were we in the company of Robert Hayes and Melvin Kearney as well?

A Yes.

Q Did you in any way indicate to me that you had given a statement to the FBI?

A No.

Q I didn't ask you, right?

A Right.

Q Did you give me -- did you attempt to give me the impression and Mr. Hayes, Mr. Cohn and Mr. Kearney, the impression that you were fighting your cases all the way?

A That I attempt to give you that impression?

Q Yes, sir.

Did you make that effort?

A I had that impression.

Q You were fighting your case all the way?

A I had the impression, yes. At the time that I -- I spoke to you.

Q Did you not agree to cooperate with the FBI on the 17th?

A I didn't agree that -- you know, to -- to,

you know, cooperate with them, you know, completely. In --

Q Just a little bit, right?

A Right.

Q When you were housed in the Bronx House of Detention before you pleaded guilty in the Bronx, who was your cellmate?

A Who was my cellmate?

Q Yes.

Was it Robert Hayes?

A Yes.

Q Did you fool Robert Hayes all the time you were there?

A Did I fool him?

Q Yes. Did you fool him?

A I didn't fool him.

Q Did you ever tell him or suggest in any way that you'd been unfortunate, been mistaken, that you made a statement to the FBI?

Did you ever tell him anything like that?

A He never asked me.

Q This is a man -- this was a friend of yours, Robert Hayes, right?

A Yes.

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Q In fact, you testified against him in the Bronx, didn't you?

A Yes.

Q Do you happen to know by the way, after you gave a statement to the FBI on the 17th of September, do you happen to know how it was that you were put in the same cell with Robert Hayes? Do you happen to know that?

A Do I happen to know?

Q Do you happen to know that, if the FBI had anything to do with it?

A No. The FBI had nothing to do with it. When we arrived at the Bronx House of Detention, they put me and Robert on the same floor. And they put me in one cell. Put him in another cell. And the inmates on the floor, you know, since we got, you know, arrested together, they said, "man, we switch cells, you know. You all could keep this cell here together."

Q The inmates were responsible for that?

A Yes.

Q The people at the Department of Correction said nothing? They permitted that, right?

A Yes. The officer permitted it, yes.

Q All right.

Let's talk about what agreements you have

with law enforcement officials.

Am I correct that all you pleaded guilty to now is one count of one bank robbery; is that right?

A That's correct.

Q Plus one count of attempted murder, a Class B felony; is that correct? Or is it two counts.

A I pleaded guilty to the -- a B Count in -- in the Bronx.

Q Is it correct to say, is it your understanding as you sit there now, that both the judges, Judge Galiardi in the Federal case, in the Southern District and Judge Dollinger in the Bronx, they have complete discretion as to whether to send you to jail for zero time or for 20 years in Judge Galiardi's case or for zero time to 25 years in Judge Dollinger's case?

Is that your understanding?

A That they can send me to jail from zero time? Sure.

Q That is right.

A Right.

Q And is it also your understanding that depending upon what various prosecutors say to those judges, that will probably influence the judges to a great extent as to what your sentence is?

A No. The -- the sentence depends entirely upon the judge. If he wishes to accept this, he can. If he don't wish to accept it because of my record, he don't have to.

Q I'm not sure what you mean.

A In other words, I'm saying, you know, like if the -- if the U. S. Attorney, I mean, Assistant U. S. Attorney and the Bronx D.A., if they make a recommendation to the judge, I don't have to get that recommendation if -- if the judge don't feel that it's necessary. The sentence I receive is upto the judge only.

Can't nobody else got nothing to do with it.

Q Are you aware that Judge Dollinger at one time was the District Attorney of Bronx County?

MR. CLAREY: OBjection.

THE COURT: Objection sustained.

BY MR. BLOOM:

Q Now, am I correct, what is your understanding, what is your complete understanding as to what your guilty plea is covering, what the U. S. Attorney and the Bronx District Attorney or any other law enforcement prosecutor will do for you or say for you?

A What to cover?

Well, first, my plea in the Bronx covers two

indictments; attempted murder. It carries 25 years, eight and a third, 25 years. My plea in Southern District of New York, Federal Court, to bank robbery, covers this bank robbery and two other bank robberies, and that at the time of my sentencing, that's two open counts on the first indictment will be dismissed and that that carries sentence of 20 years.

(continued next page.)

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CROSS-EXAMINATION

BY MR. BLOOM: (Cont.)

Q Do you have any understanding as to the bank robbery that you committed on Linden Boulevard in Cambria Heights?

A Do I have an understanding?

Q Did you discuss that through your lawyer or with Assistant United States Attorney Trubner in the Southern District, or Mr. Clarey, did you discuss how that is going to be taken care of if at all?

A How that is going to be taken care of?

Q Did you discuss whether they were going to decline to prosecute that case against you?

A I am not going to be prosecuted in that case.

Q Is that your understanding?

A Right.

MR. BLOOM: Your Honor, may I mark this document the next defendant's exhibit.

THE CLERK: Three-page document marked defendant's exhibit G for identification.

(So marked.)

Q Before we get to that, when as to the Cambria Heights-Linden Boulevard bank robbery, when were you told that that case would not be prosecuted against you?

A I don't know.

Q A long time ago, back at the same time you were told about the other ones?

A No, they didn't know about that one then.

Q When did they know about the Cambria Heights bank robbery? When did you tell them?

A What?

Q When?

A When they asked me.

Q When was that?

A I don't know. I think maybe three or four months ago.

Q Three or four months ago?

A Yes.

MR. BLOOM: Your Honor, may I come to side bar, please?

THE COURT: The jury may be excused.

(The jury left the Courtroom.)

MR. BLOOM: Can the witness be excused, please?

THE COURT: Yes.

(Witness excused from the Courtroom.)

MR. BLOOM: Exhibit G which I just had marked, Mr. Clarey has a copy --

MR. CLAREY: I wrote a letter to Mr. White

which sets forth exactly my and his understanding of any agreement he has at present. It is dated July 12th, 1974. I will be glad to give a copy to Mr. Bloom at this time. I meant to give it to him before but I forgot.

THE CLERK: Two-page document dated July 12th, 1974, marked government's exhibit 14 for identification.

(So marked.)

MR. BLOOM: May I look at that before I continue?

MR. CLAREY: Cambria Heights is my bank. They never even asked me about that bank. I asked Mr. White about it and agreed that he would not have to be prosecuted for that and this is because of his plea in the Southern District.

THE COURT: As soon as you are ready let me know, Mr. Bloom.

(Recess taken at this time!)

MR. BLOOM: We were about to discuss the document.

THE COURT: Yes.

MR. BLOOM: In the absence of Mr. White, please.

THE COURT: Will you please take a position outside the Courtroom.

(Witness excused.)

MR. BLOOM: Your Honor, I have a letter marked exhibit G for identification dated March 28th, 1974. It is a letter from Assistant United States Attorney Robert Hemley to Jesse Berman, and Margaret Ratner, Phyllis Pollard's attorney, which among other things outlines the understanding between the government and Avon White. And in that understanding, I am showing it to Mr. Clarey, and I will give him a copy of it and if the Court wishes a copy -- the government indicates -- rather the letter indicates they declined to prosecute in the instant case here, the Jackson Heights case, the Bruckner Boulevard case which is the Melvin Kearney case which he testified to about two weeks ago, no where is it mentioned the Linden Boulevard-Cambria Heights case. It may be said as of March 28th that that wasn't yet discussed, we will have to get that further from Mr. White. There was no such understanding as of that date.

However, Melvin Kearney's case was tried two weeks ago and to my knowledge, and not just conjecture, Mr. Berman was never told of any understanding with regard to any Cambria Heights case.

The letter that Mr. Clarey has shown me dated a few days ago, July 12th, does mention that as part

of the understanding that Mr. White will not be prosecuted for the Cambria Heights, Linden Boulevard, bank robbery of December 1972.

I don't know, I would like to inquire when that came up and when it was decided by Mr. Clarey or anyone else that he would get additional consideration, that is the Cambria Heights bank robbery, declining to prosecute in that case.

MR. CLAREY: It is not an additional consideration. The original understanding with Mr. White was, as I know it, he would plead to one bank robbery, period.

Now, I questioned him concerning the bank robberies he was involved in to get it down pat in a letter. Any bank robbery that he admitted to was covered by the agreement. If it was omitted in the letter to the Southern District, I don't know why they never called me to ask me specifically about it except they check to make sure we wouldn't prosecute for this bank robbery.

THE COURT: The important thing is what the witness understands the promise to be.

MR. CLAREY: That is right.

THE COURT: I believe you must ask the witness what he understands the promise to be. And whether

that motivated him in testifying in this case.

MR. BLOOM: Okay.

THE COURT: Seat the jury. Bring the witness in.

A V O N W H I T E , resumed the stand and further testified as follows:

(The jury is in the jury box.)

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. BLOOM: (Continuing.)

Q Mr. White, with regard to the Cambria Heights bank robbery, who was the first law enforcement person you told about that?

A Colson.

Q That is Special FBI Agent Danny Colson, right?

A Yes.

Q Is that correct?

A Yes.

Q About when was that, if you remember?

A I don't know, maybe about four months ago. Four or five months ago.

Q Could you give us the approximate month?

A I said I don't know, approximately four or five months ago.

Q Did there ever come a time when the FBI agents

asked you, tell us everything you've done? Tell us all the crimes you committed since you got out of Comstock?

A (No response.)

Q Or words to that effect?

A They asked me -- they told me, you know, tell us about the events leading from the time that you left New York and went to Atlanta and got arrested, or something like that.

Q Okay.

The Cambria Heights bank robbery was December of 1972, is that correct?

A Yes.

Q Right?

A Right.

Q Some five months or so before this bank robbery that you participated in, right?

A Yes.

Q When did Mr. Colson, or when, forget Mr. Colson, when did the conversation or request you just told us about "Tell us the events from the time you went to Atlanta," when did that take place?

A The day I got arrested.

Q Did you tell them on the 17th of September, the day you got arrested, did you tell them about Cambria Heights?

A They didn't ask me about that.

Q They asked you about everything you had done since Atlanta which is 1971, right?

A Crimes that I committed. They asked me events that took place. You know, like as far as my movements. Who did what. Who did this and that. At no time did they ask me about the Cambria Heights bank. I didn't tell them.

Q You told them about this Jackson Heights bank?

A They asked me about it.

Q You told them about the Bruckner Boulevard bank robbery?

A They asked me about that.

Q You told them about the Old Point Avenue bank robbery?

A Yes, they asked me.

Q They didn't ask you about Cambria Heights?

A No.

Q Okay.

Now, am I correct when -- in return for a guilty plea of one count in the Old Point Avenue bank robbery, a guilty plea to the B felony --

MR. CLAREY: Objection.

THE COURT: I will allow it.

Q Am I correct that three bank robberies, three

other banks are not going to be prosecuted?

A Right.

Q Am I correct that at the time of sentencing on the Old Point Avenue case, a 5 year and 25 year count are going to be dismissed?

A Yes.

Q Am I correct that in the Bronx, the A felonies are already dismissed in effect?

A I pleaded guilty to a B felony.

Q To cover the accusation of Class A felonies, the best you can do is 15 to life?

A Yes.

Q Had any promises been done or representations made to you about the Brooklyn cases and the two Queens cases?

A No.

Q They never told you in any way they would tell the respective District Attorneys about your cooperation?

A No.

Q Nobody else?

A Anybody ever tell me that?

Q That's right.

A No.

Q As far as you know you testified in 600 trials, you might still have to face those charges, right?

A I am still facing them.

Q How many times have you been to Court on the Brooklyn case?

A I have been to Court one time.

Q For arraignment?

A Yes.

Q Back around February or so?

A No, September.

Q In September and you haven't been back for almost a year?

A Yes.

Q You are still facing that charge?

A Yes.

Q How about the Queens cases, were you arraigned on those cases?

A Yes.

Q How many times have you been to Court on those?

A About seven or eight times.

Q Who is your lawyer there?

A I don't have a lawyer now. The lawyer that I had, he resigned because there was a conflict of interest because one of the prosecution witnesses was represented by his office.

Q Who was that lawyer?

A Bob Denehey (phonetic).

Q From the Legal Aid Society?

A Yes.

Q Now, when you pleaded guilty before Judge Gagliardi in the Old Point Avenue bank robbery, did he explain to you the possibility of sentencing you under the Youth Correction Act?

A Yes.

Q That would involve a maximum sentence of 6 years and maximum prison term of 4 years, right?

A Yes.

Q That as far as you know, as you sit there now, is a possibility, right?

A Any sentence is a possibility.

Q Is that one sentence among those possibilities?

A Yes.

Q When was it represented to you -- when did you come to understand thatthe various law enforcement officials would do their best to get your time to run concurrent? That is, the Bronx time and the federal time?

A In January.

Q This was after you pleaded guilty, right?

A (No response.)

Q On both cases?

A I said it was in January.

Q When did you plead guilty in the Bronx?

A In October.

Q When did you plead guilty before Judge Gagliardi in the Federal Court?

A November.

Q Now, was it also represented to you that the authorities were going to make their best effort to see to it that you did your time in a federal institution rather than a New York State institution?

A Yes.

Q When was that representation made to you?

A At the same time.

Q January also?

A Right.

Q Do you also understand that they are going to do their best to have you sentenced in the Federal Court first and after that go to the Bronx Court to Judge Dollinger and explain to him whathappened?

A Explain to him what is happening?

Q That's right, that you have been a government witness, that you cooperated, they made certain representations of what efforts they have made for you -- do you understand what I mean?

A Yes.

Q And that agreement came about in January also as to the time in the federal jail, right?

A Yes.

Q As a government witness, have you been kept in the Westchester County Prison at Valhalla?

A For a short period of time.

Q Is there a special section for government witnesses?

A I was kept in the special section, yes.

Q The cells are a little larger?

A That's the way the cells are built.

Q Are all cells in the institution the same size?

A No, but I had nothing to do with the construction of the jail.

(Continued next page.)

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Q You were kept in one place for Government witnesses and other inmates who weren't Government witnesses were kept in another part of the institution, is that right?

A Yes.

Q Your part of the institution was still a jail, but was it a little better?

A Better?

Q Bigger and a little more freedom?

A Yes, we got a little more freedom, yes.

Q You pleaded guilty in September, was it in the Federal Court -- I'm sorry, October?

A No.

Q I have them mixed up. October in the State Court and November in the Federal Court?

A Yes.

Q How many times have you been back to Bronx County for sentence?

A I have been on the Court calendar but I haven't made an appearance.

Q How many times to your knowledge have you been on the Court calendar since November? Is it or am I still confused?

A I don't know.

Q When you pleaded -- when did you plead guilty in

the Bronx?

A October.

Q Since October, how many times have you been on the Court calendar for sentence in Bronx County?

A I think maybe six times.

Q And you haven't been sentenced yet?

A No.

Q It is still hanging over your head?

A Nothing is hanging over my head.

Q It is not?

A No.

Q Are you conscious of the fact that your sentence could go anywhere from probation to eight and a third to twenty-five years in the Bronx?

A I am conscious to the fact, to the fact of probation -- I rule that out.

Q You don't think you will get probation?

A I know I am not going to get no probation.

Q What is the least you think you can get?

A The least?

Q Yes.

A About ten years.

Q You know a man named Johnny Rivers, right?

A Yes.

MR. CLAREY: Objection.

THE COURT: What is the next question?

Q You know he got three years --

MR. CLAREY: Objection.

THE COURT: Objection sustained.

Q Whatever that sentence was --

THE COURT: Objection sustained.

MR. BLOOM: May I be heard, your Honor?

THE COURT: The Jury may be excused.

(The Jury left the Courtroom.)

MR. BLOOM: I offer your Honor the testimony -- I expect testimony that Mr. White is aware that Johnny Rivers, who was a participant in the Oak Point bank robbery, was a co-operating witness and he was sentenced by Judge Gagliardi, I believe it was Judge Gagliardi, he was sentenced to three years. And that man has a criminal record not quite so bad as Mr. White.

THE COURT: Everything looks the same when you argue a certain way. There are certain differences?

MR. BLOOM: Indeed there are differences.

THE COURT: This witness said he expects ten years. You asked a question about what Mr. Rivers got and the next question was argumentative.

MR. BLOOM: I think it is for the Jury to

determine whether it's reasonable that he expects ten years.

THE COURT: I find it is argumentative. You are telling the Jury this man shouldn't be believed when he says ten years because Mr. Rivers got three. That's what you are saying.

MR. BLOOM: I am telling the Court I believe it is certainly germane for the Jury to determine whether this man is a truthful person in this area and all other areas.

THE COURT: That is one issue. The question is improper in form when you are arguing with the witness about what he is saying. You are not getting information.

MR. BLOOM: My next question would be, are you aware that Mr. Rivers was also a co-operating witness in the Oak Point Avenue robbery and was sentenced to three years.

THE COURT: I think I sustained the objection to that.

MR. BLOOM: There was --

THE COURT: From what you told me subsequent, I am sure I was right in the first place. It is purely argumentative.

MR. BLOOM: I am not arguing, I am asking if he is aware of that fact. Let the Jury decide whether it is argumentative, they can call it argumentative deducing, whatever --

THE COURT: I determine whether it is argumentative and I find it is argumentative.

MR. BLOOM: Very well, you ruled.

THE COURT: Seat the Jury.

(The Jury is in the Jury Box.)

CROSS EXAMINATION

BY MR. BLOOM (continued):

Q Your State sentence has been adjourned, you haven't been sentenced yet? You pleaded guilty last fall? Is the same true for your Federal sentence before Judge Gagliardi?

A Have I been sentenced?

Q You have not been sentenced, is that correct?

A No.

Q You feel that is also hanging over your head, that sentence that could be from anything to twenty years?

A I told you I don't feel it is hanging over my head.

Q You don't feel that is hanging over your head?

A No.

Q Would you prefer to have been sentenced right

now as you sit there? Would you feel more comfortable?

A I would have preferred to have been sentenced six months ago so I could have, you know, started my time already and gotten into some sort of constructive thing.

Q Is it in your mind that your performance as a witness will affect what the United States Attorney has to say to the two sentencing judges? When I say the United States Attorney, I mean the United States Attorney and the Bronx District Attorney. Is it in your mind that you have to please these people, that if you went out and said Fred Hilton didn't have anything to do with this bank robbery that would affect your sentence?

MR. CLAREY: That is a very long question.

THE COURT: Overruled, if you understand.

A I understand to the effect I am not performing as you said, I am not performing anything. You know.

THE COURT: Do you feel that if you said Freddie Hilton was not in this bank robbery it would go hard on you, that Justice Dolinger (phonetic) in the Supreme Court and Judge Gagliardi in the District Court of the Southern District would go hard on your sentence?

THE WITNESS: No. I feel they will be hard on me if I said that he was there and he wasn't.

Q Judge Gagliardi wasn't with you and

Judge Dolinger wasn't with you when you went to Jackson Heights?

A Right.

Q You don't know who was there?

A Yes.

Q You know who was there, right?

A Yes.

Q Now, if you can answer this question which the Judge asked you, do you think if you came out right here and said Fred Hilton had nothing to do with this, do you think that would make a difference in what the prosecution would say to the judge and what the judge will do to you?

A I don't understand that. Can you repeat it?

Q Do you think if you came right here and said Fred Hilton had nothing to do with this April 10th bank robbery in Jackson Heights, do you think that would ultimately hurt you in terms of a heavier sentence?

A I would be charged with perjury.

Q Because you said in the past, in the Grand Jury, have you not, that Fred Hilton was with you, right?

A I say so today too.

MR. BLOOM: Excuse me one second.

(Pause.)

MR. CLAREY: Can we have a side bar, your Honor?

THE COURT: The Jury may be excused. I might

explain to the Jury my asking you to leave the Courtroom is a method I use to hear argument. Some judges take arguments at side bar, but I find it is a cumbersome way of doing it. This isn't the choosing of the lawyers, it is my choosing. And I think the Jury rather enjoys a short walk back and forth. It makes it easier for the lawyers because they can argue freely instead of worrying about being heard.

(The Jury left the Courtroom.)

MR. BLOOM: May I ask Mr. White be excused?

THE COURT: Will you please be excused.

(The witness excused from the Courtroom.)

THE COURT: Do you still want Miss or Mrs.Grivas?

MR. CLAREY: I told her to come back tomorrow.

MR. BLOOM: I suggested that we would not get to her today because there are other witnesses when I am finished with Mr. White.

MR. CLAREY: I have this copy and neglected to give it to Mr. Bloom. It is the witness' Grand Jury testimony. It is only a few pages. Seven pages.

THE CLERK: So marked, Government's Exhibit 15.

MR. CLAREY: I will give it to him now.

THE COURT: Tell me when you are ready.

(A recess was taken at this time.)

(The following occurred in the absence of the jury.)

THE CLERK: Detective Thompson's report marked government's exhibit 16 for identification.

(So marked.)

THE COURT: Seat the jury.)

(Jury present.)

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. BLOOM: (Cont.)

Q I believe we were talking about whether you felt in your mind that these two sentences are hanging over your head and that what you say in Court or don't say in Court, does that in your mind -- do you think that that will affect your sentences in the two cases?

A No.

Q So is it fair to say, you could say Fred Hilton was the driver or Fred Hilton was the driver (sic), wouldn't make any difference to you in your sentences; right?

MR. CLAREY: The questions are-getting a little tricky for me.

THE COURT: Strike it out and the jury disregard it. Objection sustained.

MR. CLAREY: Your Honor --

THE COURT: Objection sustained as to form.

MR. BLOOM: I'll try to rephrase it.

BY MR. BLOOM:

Q In your mind, as you sit there now, do you think it makes no difference as to what your sentences will be, what your future will be, whether you say Fred Hilton was the driver on that day or Fred Hilton wasn't the driver on that day?

A Well --

Q Do you understand the question?

A Yes.

THE COURT: If you can answer the question in that form, answer it. If you cannot, say you cannot answer it.

THE WITNESS: I can't answer it.

Q Okay. Let me try to rephrase it.

Do you think it makes a difference -- it will make a difference to your sentence whether on the one hand you say Fred Hilton wasthe driver or on the other hand you say Fred Hilton was not the driver? Do you think -

THE COURT: That is the same question.

MR. BLOOM: I'm going to try to frame it so it's clear. I know it's a little -- it's a difficult

question to frame.

THE COURT: It is a difficult question, Mr. Bloom, I suggest, because it eliminates the truth-telling factor.

MR. BLOOM: Well, I'll try to include that.

THE COURT: Yes. Please do.

BY MR. BLOOM:

Q I assume that it's your testimony that you've told the truth here today, as to Mr. Hilton and his participation as a driver of this car on April 10th; right?

A Yes.

Q Okay. Now, is it your view, as you sit there, that it wouldn't make any difference whether you said he was or wasn't the driver, wouldn't make any difference to your sentence?

A It would make a difference because I would -- I would be charged with perjury.

Q Would it make any difference in your own mind, as to what the prosecutors would tell the Judges involved? In addition to being accused of perjury?

A I don't understand that.

Q Forgetting for the moment -- we understand that you fear that if you lie you would be accused of perjury; right?

A Yes.

Q Okay. In addition to that, do you feel what the prosecutors would say and what your sentences would be would be different if you said Fred Hilton didn't participate in the robbery? In other words, do you think --

THE COURT: May I frame the question, Mr. Bloom?

MR. BLOOM: Pardon?

THE COURT: May I try to frame the question?

MR. BLOOM: Please, please.

THE COURT: Aside from the question as to whether it's the truth or not, forget that for a moment and lay it aside, don't you think that the prosecutor would be more helpful to you if you said Fred Hilton was the driver than if you said that he was not the driver?

THE WITNESS: Yes.

MR. CLAREY: Objection to the question, your Honor.

THE COURT: All right. Objection overruled. The witness said "Yes." All right, Mr. Bloom.

MR. BLOOM: Okay.

BY MR. BLOOM:

Q Now, before you pleaded guilty in the Bronx, did you discuss with your attorney that you were pleading

guilty to something that you didn't do?

A Did I discuss with him?

Q Did you have that discussion with him?

A I only seen him just one time.

Q You only saw Mr. Bruce one time?

A Twice. No. Once, twice. Two or three times I seen him.

Q On the day that you pleaded guilty before Judge Dollinger to attempted murder of police officers, okay, on that day how many times had you seen Mr. Bruce, including that day?

A Three.

Q And did you discuss with him either that day or the day before that or the day before that that you saw him whether you were going to plead guilty, whether you were going to have a trial or what? Did you discuss that with him?

A Well, no. You know, we didn't discuss that. He told me that he could, you know, get me a -- a plea.

Q When did he tell you that?

A About two -- I think two days before he did.

Q Before -- a couple of days before you pleaded guilty?

A Right.

Q And at that time were you still Robert Hays' cellmate?

A Yes.

Q Did you discuss that with him?

A Well, I told Robert Hays and Melvin Kearney, you know, if they would offer me a plea I was going to take it.

Q ANd did they discuss with you, did they ask you if that meant your cooperating and testifying in that case involving the shooting of police officers?

A No.

Q Involving them?

A No.

Q Did they discuss that with you?

A No.

Q The question never came up; right?

A No.

Q Did the question ever come up as to why they were offering you a plea and not offering them a plea?

A We didn't go to Court at the same time.

Q Did that ever come up as to why -- did they ever say hey, how come you go to Court on a different date from us?

A Because I had different charges.

Q You had different charges from them?

A Yes.

Q You were not indicted under exactly the same indictment in exactly the same wording as they were?

A I had a charge -- I had two different indictments in the Bronx.

Q In other words, you had that same charge plus another; right?

A Right.

Q That's the reason you are saying you went to Court on different days?

A I mean, that could have been the reason.

Q Was that the reason?

A No.

Q You know what the reason was; right?

A Yes.

Q And they knew the reason, too; didn't they? And they asked you about it; didn't they?

A They didn't know the reason because I didn't go back to the Bronx that night.

Q Before you pleaded guilty, when you discussed with them the possibility -- the fact that if you got a plea offer you were going to take it?

MR. CLAREY: Objection. I do not see the relevance, your Honor.

THE COURT: Will you read the question and

answer before and this one?

(Record read.)

THE COURT: Objection sustained.

BY MR. BLOOM:

Q When did youfirst learn that you were being offered a plea to a Class B felony?

A About two days before. Two or three days.

Q Are you sure of that?

A Yes.

Q Do you remember testifying a couple of weeks ago, June 25, in Melvin Kearney's trial in the Southern District, page 169, starting at page 168, question by Mr. Berman?

"My question is, when he got to Court," meaning your lawyer, "when he got to Court and started to plead guilty, was that when he first learned" -- this is explaining to the Judge what thequestion was -- "... was that when you first learned that you were being allowed to plead to something less than the top count of the indictment? Do you understand the question?'

"Answer: Yes.

"Question: What is your answer to that?

"Answer: My lawyer told me, you know, that there is a possibility that they might allow me to plead

guilty to a B felony.

"Question: But you didn't learn that -- I'm sorry -- but you didn't learn that they were letting you plead to a B felony until someone said in open Court; is that right?

"Answer: Yes."

Do you remember those questions and those answers?

A Right.

Q Is that correct or did you learn two days before?

A Like I said, two or three days before my lawyer told me that they might let me, you know, take a plea of guilty and on the 23rd of October, when I got into the Courtroom, was when I learned that they was going to allow me to plead guilty to a B felony.

Q When is the first time you learned that an A felony carried a mandatory life sentence, if you're convicted?

A I don't know.

Q Did your lawyer ever tell you that, Mr. Bruce?

A No.

Q He never told you that?

A No.

Q Was there a person who told you that at some point?

A A couple of, you know, guys in jail.

Q Inmates in the Bronx jail; right?

A Yes.

Q But your lawyer never did tell you that?

A No.

Q Did a Judge tell you that?

A No.

Q Did an Assistant District Attorney tell you that?

A No. Then I --

Q Did you ever discuss -- I'm sorry?

A And then I seen it inside the -- inside the law book.

Q I can't hear you.

A- I seen it in the law book.

Q What law book?

A What law book?

Q Yes. What law book did you look at?

A Gilbert's.

Q Where did you look at that law book?

A Where?

Q Yes.

A In jail.

Q Bronx jail; right?

A No.

Q Which jail?

A I think it was -- I was in Sing Sing.

Q I can't hear you, sir.

A When I was in Sing Sing.

Q When was that?

A Recently.

Q How recently? What month?

A Last month.

Q So approximately June of 1974 is the first you learned that a class A felony with which you were indicted carried a mandatory life sentence?

A No.

MR. CLAREY: I object to the form of the question. It's an incorrect statement.

THE COURT: I will allow it. The witness has answered it.

A (Continuing.) No. You know, I -- you know, I found out that it carried, you know, 25 to life. I always thought it carried 15 to life.

Q When is the first time you heard, my question is, that it's a mandatory life sentence, if you're convicted?

A First time I heard it?

Q Yes sir. Heard or read?

MR. CLAREY: Objection. That is not what the witness testified that he read or heard.

Q Let me -- did there come a time when you learned that?

A Yes.

Q When was that and from whom?

A In the Bronx jail.

Q In the Bronx?

A In the Bronx jail.

Q From an inmate?

A Yes.

Q Did you ever discuss that with your lawyer?

A No.

Q Who is Eleanor Brown?

A Who is Eleanor Brown?

Q Yes.

A She's my woman.

Q Was it part of the deal that she -- she was in jail and arrested on September 17th also; wasn't she?

A Yes.

Q Was it part of your deal that she would be released in her own custody without having to put up any bail money?

A No.

Q Was she in fact released the day you pleaded guilty?

A Yes.

Q You had no idea that was going to happen; right?

A Did I have an idea it was going to happen?

Q Yes.

A No.

Q Just a lucky break, so far as you know; right?

A The other girls was released with -- you know, without bail, too.

Q The same day?

A No, not the same day.

Q Much, much later; right?

A I don't know how much, much later it was, but they was released without bail.

Q You think about how much later? Are you talking about Melvin Kearney's woman and Brenda Hays, Mr. Hays' wife; is that right?

A Yes.

Q How much later were they relieved?

A I don't know and I don't --

Q They spent a lot more time in jail; didn't they, than Eleanor Brown?

MR. CLAREY: Objection. Mr. Bloom is now testifying again.

MR. BLOOM: I'm asking.

BY MR. BLOOM:

Q Isn't it a fact that they spent much more time in jail than the woman of the man who pleaded guilty and agreed to cooperate?

A That depends on what you consider much more time.

Q What do you consider much more time?

A I don't know. Much more time could be six, seven months.

I think it was about two, three weeks later that -- that she was released.

Q In April of 1973, late March, early April, where were you living?

A On Marian Avenue.

Q Whom were you living with?

A With Freddie Hilton, Twymon Meyers, Phyllis Rdlard and Melvin Kearney lived there sometimes.

Q Now, do you remember testifying in the grand jury in January of this year and you were asked, on page 2:

"Question: Mr. White, in April of 1973, where did you live?

"Answer: I lived in an apartment on Marian

Avenue in the Bronx.

"Question: Did other people live with you?

"Answer: Yes.

"Question: Who?

"Answer: Me, Twymon Meyers, Freddie Hilton, Phyllis Pollard."

Do you remember those questions and those answers?

A Sure.

Q Is there any reason you left out Melvin Kearney?

A Like I said, he lived there sometimes. He wasn't a permanent resident.

Q That's the reason you left him out, because he only lived there sometimes?

A Yes.

Q Now, did Melvin Kearney participate in the planning of this bank robbery with you?

A What do you mean, did he participate in planning it?

Q You don't understand my words; right?

A No.

Q Did he engage in discussions with you and others about robbing the bank on Northern Boulevard?

A Yes.

Q Did you ever tell the FBI about that?

A Did I ever tell them?

Q That's right.

A I don't know. I think I might have told them.

(Continued next page.)

CROSS-EXAMINATION

BY MR. BLOOM (Cont'd):

Q Did you ever tell Mr. Clarey about it before you went into the Grand Jury in January of this year?

A No. Before I went in the Grand Jury, I never -- I never seen Mr. Clarey.

Q Pardon me?

A Before I went into the Grand Jury, I never seen Mr. Clarey.

Q You didn't see Mr. Clarey before you went in? Is that what you're saying?

A Right.

Q Did you see him in the Grand Jury?

A I mean, in -- in other words, I'm saying like -- you know like I'm talking but now, like I never seen, you know, him, you know, like before that date.

Q On that day, before you actually went into the Grand Jury room, did you have a discussion with Mr. Clarey?

A He -- he just asked me, you know, would I, you know, want to go before the Grand Jury.

Q Did you have -- you did then have a discussion with him; right?

A Yes.

Q About the facts and circumstances of April 10th

and April 9th; right?

A I don't think we went over, you know, all the -- all the facts and none like that.

Q Did you go over any of the facts?

A I don't remember because it was just a brief, you know, discussion because it was kind of late and they was rushing us for some reason.

Q Now, did you -- did you in fact tell Mr. Clarey anything about Melvin Kearney in your discussion before the Grand Jury?

Did you tell Mr. Clarey that Melvin Kearney had anything to do with the planning of the bank robbery?

A Before the Grand Jury?

Q Yes.

THE COURT: Before you went before the Grand Jury, did you tell Mr. --

THE WITNESS: Like I said, I don't remember. I don't remember.

Q Before you actually went into the Grand Jury room, January 10th or some day in January, of 1974, did you tell Mr. Clarey or Mr. McCartin or anybody else, Mr. Coulson, anybody else that Melvin Kearney in some way was involved in planning this bank robbery?

Did you tell that to anybody?

A I said, I don't remember.

Q You don't remember that?

A No.

Q Was Mr. Kearney involved in planning --

A He was in -- you know, on discussions with us. But he wasn't going to, you know, participate in it.

Q Was that decided -- when was it decided he wasn't going to participate in it?

A When was it decided?

Q Yes.

A He wasn't going to participate in it from the beginning.

Q Well, did he go try to get a car before the bank robbery?

A No.

Q Did he go look at the bank on Northern Boulevard in any way?

A No.

Q Now, how long in April of 1973, how long had you known Phyllis Pollard?

A How long? I think I met her sometime around -- about August or September of '70.

Q Of '70?

A Yes.

Q So that's approximately we are talking about close to three years; right?

A Close.

Q Did you know her by her name, Phyllis Pollard?

A Yes, I did.

Q Do you remember telling the --

THE COURT: That's close to four years, isn't it, from August '70 to July, 1974?

THE WITNESS: No. He's talking about -- he ain't talking about now. He said July of '73.

MR. BLOOM: Yes.

THE COURT: To July of '73?

MR. BLOOM: As of last year, that's right.

THE COURT: All right.

BY MR. BLOOM:

Q Now, do you remember giving the FBI a statement about this bank robbery on the day you were arrested?

A Yes.

Q Do you remember telling the FBI, did they ask you questions about the bank robbery?

A Yes.

Q And did they ask you who participated?

A Yes.

Q Did they ask you what various people did?

A Yes.

Q And did you tell them what various people did?

A Yes.

Q What did you tell them you did? This is on -- we are talking about September 17th, when you were arrested, and when you were making a statement to the FBI about this bank robbery.

A I told them I jumped over the counter and took the money.

Q And did you see them write down what you were telling them?

A I don't know if they wrote down what I was telling them. They was writing down.

Q Did they ask you to speak slowly so they could get everything?

A It was a whole bunch of people writing.

Q Several people were writing?

A Yes.

Q To your knowledge, were most or some of them FBI agents?

A Two of them.

Q Who were they?

A It was, I think -- I know Coulson and I think it was Baker.

Q I'm sorry, sir?

A I think it was Coulson and Baker.

Q Which one was writing or were both of them writing?

A I know Coulson was writing.

Q Did you tell him anything about Melvin Kearney's participation in this bank robbery?

A He didn't participate in this bank robbery.

Q Isn't it a fact that you told them Melvin Kearney was driving the car?

A No, sir.

Q Did you tell them what you did?

MR. CLAREY: Objection. Is Mr. Bloom apparently reading from a form?

MR. BLOOM: I'm not reading from anything.

Q Did you tell them what you did?

A Yes, sir.

Q What did you tell them as to your role?

A I told them that I jumped over the counter and took the money and put it in the pillowcase and jumped back overthe counter and left.

Q Did you tell them how much money was involved?

A I couldn't tell them for sure, you know, because I don't know. I know it was approximately -- it was

approximately, you know, close to six grand, approximately.

Q Did you tell them that?

A I don't know.

Q On that date, on the 17th?

A I don't know if I told them that. I don't know if they asked me that.

Q Just so we understand, did you give a full and complete account of what happened on April 10, 1973, as full and complete as you could remember?

A Did I give -- no, I didn't give a full and complete account.

Q Did you hide things from the FBI?

A Yes.

Q What did you hide from the FBI?

A Well, you know, at first you know I was trying to hide, you know, two people's names. I was trying to hide, you know -- I was just trying to hide one name.

Q What name did you hide?

A Phyllis.

Q You told them Margaret, right?

A Right.

Q You knew there was no such person named Margaret who participated in the bank robbery?

A Right.

Q You lied to the FBI; right?

A I lied about that; right.

Q Did you lie about anybody else to the FBI? For example, did you lie about Fred Hilton driving the car?

A No, sir.

Q Or participating in any way in this bank robbery?

A No, I did not.

Q Isn't it a fact, Mr. White, Fred Hilton didn't have anything to do with this bank robbery, and they brought up the name and you threw it at them because you thought they wanted to hear it?

A No, that is not a fact. It's a fact that he did have something to do with it.

Q Did Melvin Kearney have any function at all in this bank robbery? Did he have any job to do at all in this bank robbery?

A In the bank?

Q Anywhere?

A No. Only thing he had to do was, you know, stay home, you know, listen to the radio, you know, buy some wine and get some reefer for us when we come back.

Q And that's what he did; right?

A Yes.

Q He didn't drive the car; right?

A He wasn't even -- even in the car.

Q Did he get the wine?

A Yes, he got the wine.

Q Did he get the reefer?

A Yes.

Q Reefer is marijuana; right?

A Yes.

Q So that was his job? Did he participate in divvying up -- did he get any money from the bank robbery?

A Yes.

Q How much money did you get from the bank robbery?

A $200.

Q Now, you had a gun; right?

A Yes, I did.

Q Did Fred Hilton have a gun?

A Yes, he did.

Q What kind of gun did he have?

A A Browning nine millimeter.

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(Continued on next page.)

CROSS-EXAMINATION

BY MR. BLOOM: (Cont.)

Q Now --

MR. CLAREY: Could we get the time on that question?

MR. BLOOM: Sure.

Q I mean, during the bank robbery, during the time the bank robbery took place? And I believe that's what you are answering, right?

A Right.

Q Okay.

Now, let's go back to April 9, the day before and when you and Fred Hilton took the car. I recollect that when you took the car you parked it two houses away from you on Marion Avenue?

A Approximately, yes.

Q Stolen car? And you parked it two houses away, right?

A Right.

Q Before you went to Jessup Avenue, you went to see someone. Who is that you went to see?

A I went to see Eleanor.

Q Eleanor Brown?

A Yes.

Q Did she have anything to do with this bank robbery?

A No.

Q On the way to the bank robbery, how long did it take you to drive from the Bronx to Jackson Heights?

A ABout 45 minutes.

Q Is it your testimony that you didn't discuss this bank robbery at all inthe 45 minutes?

A Excuse me?

Q You did not discuss this bank robber at all in 45 minutes?

A That's right.

Q What did you talk about?

A We didn't talk about nothing.

Q Just kept quiet, right?

A Yes.

Q During the ride, who had gloves on?

A Who had gloves on?

Q Yes.

A I had on gloves. Phyllis had on gloves. And Freddie had on gloves.

Q But not Twymon Myers, right?

A No.

Q Did anyone -- who had wool hats with eye holes

on them?

A I did.

Q Anybody else?

A Twymon and Phyllis had on the -- these kinds of hats, you know,that you can pull down and see through. They had like, you know, knit hats.

Q Pardon me?

A They had on, you know, knit hats where you can see straight through.

Q You wouldn't have to cut a hole in them?

A No.

Q What kind of gloves did you have on?

A What kind of gloves?

Q Yes.

A You know, like them racing type gloves. Black racing type gloves.

Q Racing type gloves?

A Yes.

Q Meaning racing drivers with holes in the back.

A Holes in the back, you know, with the snap running across and got like that.

Q What kind of gloves did Phyllis have on?

A Same type.

Q What kind of gloves did -- was it the driver, was it Fred Hilton?

A Yes.

Q What kind of gloves did he have on?

A Same type.

Q Where did you get those gloves?

A Yes.

Q What kind of gloves did he have on?

A Same type.

Q Where did you get those gloves?

A Bought them in a store.

Q Who bought them?

A I forget who bought them. We had them for a while.

MR. BLOOM: Excuse me one moment, please, your Honor.

(Pause.)

BY MR. BLOOM:

Q Now, did you see Phyllis fire the gun?

A Did I see her fire it?

Q Did you see her fire the gun?

A I didn't see her fire it.

Q Did you see what she was doing when she fired the gun?

A She was climbing over the counter.

Q In your view, did it accidentally go off or

did she aim it at someone or what happened?

A She said that it went off accidentally.

Q Did you see her aim the gun and shoot at somebody?

A I said, Idid not see her aim the gun. I was -- when the gun went off, I was already over the counter scopping up the money.

Q Did you see where the bullet hit?

A No, I wasn't interested in where it hit. I was interested in getting the money.

Q Did you get startled when you heard a gun shot?

A I get startled?

Q Yes.

A I stopped and said, "What's happening"? And she said,"It's okay." You know.

Q Now, when you got -- what apartment did you go to when you left the bank? Ultimately, what apartment did you end up in?

A What apartment was it?

Q Yes.

What street?

A Jessup Avenue.

Q Okay.

Was Melvin Kearney there?

A Yes.

Q Was anyone else there?

A Yes.

Q Was anyone else there?

A Yes.

Q Who was there?

A Pamela Hanner.

Q Pamela Hanner?

A Yes.

Q Was Fred Hilton there when you got back?

A Me and him got back together.

Q You split up, right?

A Did we split up?

Q There were four of you who participated in this bank robbery, right?

A Right.

Q And there came a time when the car had a flat tire and you all split up, right?

A No. We took the train to 125th Street and then we split up.

Q Okay.

When you split up, you went, you say, with Fred Hilton, right?

Q And the other two were Phyllis and Twymon, went together?

A Yes.

Q Who arrived at the apartment first, you and Mr. Hilton or the other two?

A Me and Freddie.

Q Over lunchtime, did you have any medication, any vallum?

A No.

Q Did you have any discussions with Mr. Clarey about this case?

A He asked me, you know, one question. He asked me, you know, did I, you know, gain any weight since the bank robber and I --

Q Did you?

A Yes, I did.

Q How much did you gain?

A I don't know.

I think I -- approximately about the time I was about 185 pounds.

Q So you gained something like 35 pounds or so, right?

A Yes. Something like that.

Q Between April and -- how much did you weigh

when you were arrested?

A I don't know.

Q Was it more like what you weigh now?

A What?

Q Was it more like what you weigh now?

A Yes.

Q Or more like 185?

A No. More like I weigh now.

Q Pardon me?

A More like I weigh now.

Q Is it fair to say you gained approximately 35 pounds between April and September of last year?

A Yes. That's fair to say.

Q That's quite a summer.

A What?

Q It was quite a summer.

A Yes. I was laying up.

Q Now, at what point did you put your mask down or did you put your maks down?

A I put mine down.

Q When?

A As I ran into the bank.

Q Did you see Phyllis put her mask down?

A I wasn't looking at nobody else.

Q When she went over the counter and you heard the gunshot,did you look in her direction, right?

A Yes.

Q Did she have her mask down?

A Partially.

Not -- not completely. Just partially, because I -- I'm telling her, you know, that -- she didn't have her mask on all right.

Q When did you tell her that?

A After, you know, we got back to the apartment.

Q But you had yours down all the way, right?

A Right.

Q And you jumped over toward -- you jumped over the counter toward the rear, if I understand correctly?

A Yes.

Q She jumped over the counter toward the front, right?

A Yes.

Q Did you tell any of the bank employees to lie down or to do one thing or another?

A Told them,back up.

Q And did they back up?

A I think some of them laid down. I'm not sure. I don't remember what they did.

Q I'm sorry, sir.

A I think some of them laid down. I know they was out my way. That's all I know.

Q At any time after the 17th of September, the day you were arrested, did you give a statement to the FBI about what happened in this bank robbery?

A Anytime after?

Q Yes.

Not counting that day, the day you were arrested, say, the 26th of September or any other time?

A Yes.

Q Did you make a statement to the FBI that they wrote down?

A Yes. I think so.

Q About when was that?

A I don't know. But I know --

Q Approximately how long after the first?

A I remember -- I remember -- it might have been about a month. And I gave them, you know, an accurate account of what happened and I, you know, gave them an accurate account of who Margaret was.

Q When was that, approximately?

A I don't know.

Q I know you can't pin it down but approximately

how long after your arrest?

A A week, two.

Q Pardon?

A A week or two.

Q A week or two?

A Yes.

Q And did you notice that they were writing down what you said?

A Yes.

(continued next page.)

MR. BLOOM: Your Honor, I would like to go sidebar or however you wish --

THE COURT: The jury may be excused.

(The jury left the courtroom.)

MR. BLOOM: May I ask the witness be excused, please?

THE COURT: You are going to make a demand for 3500 material?

MR. BLOOM: Yes.

THE COURT: Why can't that be done here? You are going to make a demand from the Government?

MR. BLOOM: I would like to put it on the record and I don't want the witness to be affected by my application.

(The witness left the courtroom.)

MR. BLOOM: I make that demand based not only on what the witness says -- in the Chesimard-Hilton trial there were complete and full statements made with regard to various events on the 26th of September of 1973. The witness believes there is and I cannot --

THE COURT: Are you talking about a full and complete statement of April 9?

MR. BLOOM: And 10.

MR. CLAREY: You have such a statement. I asked

the FBI if there was any other recorded statement and I have been told there is none by Agent McCartney.

THE COURT: Have you made a thorough search of all the files with regard to this matter?

MR. McCARTNEY: Yes.

THE COURT: That is the answer. That is a representation it doesn't exist.

Bring the witness in and bring the jury in.

A V O N W H I T E , resumed and testified further as follows:

(The jury entered the jury box.)

MR. BLOOM: One or two more questions, Mr. White.

BY MR. BLOOM:

Q I am not quite clear whether or not Melvin Kearney agreed, talked with you and others, and three others, about robbing a bank either in Jackson Heights or somewhere in the period around April 10th; did Melvin Kearney participate or take part in the discussions you told us about?

A Yes.

Q Do you remember in the Grand Jury Mr. Clarey asking you the following questions on page 2:

"Question: Did there come a time on April 9, 1973 when the four of you decided to commit a bank

robbery?" This is just after you had answered, "yourself, Twymon Meyers, Fred Hilton and Phyllis Pollard lived at Marion Avenue. Referring to the four of you.

"Question: Did there come a time on April 9, 1973, when the four of you decided to commit a bank robbery?

"Answer: Yes.

"Question: Was this on April 9th you decided to commit a bank robbery?

"Answer: No.

"Question: When was it?

"Answer: It was about the beginning of April or the end of March."

Do you remember those questions and answers in the Grand Jury?

A Yes.

Q Did you in any way try to correct Mr. Clarey that there were really five people involved in this?

MR. CLAREY: Objection.

THE COURT: Overruled.

MR. CLAREY: The question whether --

THE COURT: What is the objection? I won't take argument. If you want to argue I will excuse the jury.

You may answer that.

Q Did you in any way make any effort to explain to Mr. Clarey either before you went in the Grand Jury or there in the Grand Jury that Melvin Kearney was involved in this bank robbery?

A No.

Q Is it fair to say, Mr. White, by January 1974, when you testified in the Grand Jury, you knew that they indicted Mr. Kearney on two other bank robberies, it wouldn't make any difference to you, couldn't help you put --

MR. CLAREY: Objection.

THE COURT: Objection sustained. It is argumentative.

MR. BLOOM: I have nothing further, your Honor.

THE COURT: Any redirect?

MR. CLAREY: Just a couple of more questions, your Honor.

MR. BLOOM: May I ask that question in a different form?

THE COURT: Yes.

BY MR. BLOOM:

Q By the time you went into the Grand Jury in January of '74, isn't it a fact you were aware that Melvin Kearney had already been indicted to two separate bank

robberies?

MR. CLAREY: Objection.

THE COURT: Overruled. Were you aware?

A No, sir, I was not aware.

Q Isn't it a fact you had told the FBI about two separate bank robberies involving you and Melvin Kearney by that time?

A Yes.

MR. BLOOM: Thank you.

THE COURT: Mr. Clarey.

REDIRECT EXAMINATION

BY MR. CLAREY:

Q In your mind, Mr. White, did Melvin Kearney participate in the April 10th bank robbery?

A He didn't participate. He couldn't participate if he wasn't there.

Q In your view as to whether he participated or not --

A Yes.

Q He didn't participate?

A He participated in discussions.

Q But not the actual robbery, right?

A Right.

MR. CLAREY: I would like to mark this document

which is from the original Government's Exhibit 3.

THE CLERK: So marked as Government's Exhibit 3-C for Identification.

(So marked.)

THE COURT: May I see it?

MR. CLAREY: First I will show it to Mr. Bloom so he can turn to the page.

THE COURT: May I see it so I know what you are talking about.

MR. CLAREY: Yes, your Honor.

THE COURT: Show it to Mr. Bloom.

MR. CLAREY: I show you 3-C for Identification, Mr. Bloom.

(Pause.)

MR. BLOOM: I know what it is.

MR. CLAREY: I will offer it in Evidence.

THE COURT: Any objection?

MR. BLOOM: No objection to that.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 3-C previously marked for Identification now marked in Evidence.

(So marked.)

Q I will ask you to take a look at that document, Mr. White, then ask you what it means to you.

THE COURT: Objection sustained. If you want to read it, I will allow it, but I don't want this witness' interpretation.

MR. CLAREY: All right, I will read it.

It is a document entitled Clinical Summary, Matteawan State Hospital, referring to Avon White and an identification number, age of admission, 18; date of admission,July 16, 1968. The date of this summary is September 17th. And there is a date March 20th, 1969. It states:

"A certificate of recovery having been issued, this patient was today discharged from this hospital and taken to Great Meadow Correctional Institution. Diagnosis: Psychosis with psychopathic personality, paranoid and reactive features. Condition on discharge: Recovered from psychotic episode."

Now, when you were speaking to the psychiatrist about Allah, did that have anything to do with the religion?

A Yes.

Q What religion was that?

A Five percenters.

Q Five percenters?

A Yes.

Q Did that religion tell you you had a relationship

to Allah?

MR. BLOOM: Objection.

THE COURT: Overruled, I will allow it.

A Yes.

Q What was that relationship that the Five Percenters taught you?

A They taught me that I was God and I was the Son of God and that, you know, I was -- a whole bunch of crazy stuff.

THE COURT: How old were you at the time?

THE WITNESS: Sixteen.

Q Where did you meet these Five Percenters?

A In jail.

Q Did you really believe these things concerning that religion that they were telling you at that time?

A At one point I did.

MR. BLOOM: I object, only that I would ask what time Mr. Clarey is referring to.

THE COURT: You will have a chance to recross.

MR. CLAREY: I will ask the question.

Q When did you believe that?

A Like at first, you know, when I first started believing, around about, you know, '66.

Q Then you didn't believe it when you told it

to the doctors, is that correct?

A Right.

Q Pardon me?

A Right.

Q What was your purpose in telling it to the doctors?

A So I could go to Matteawan.

(Continued on next page.)

Q Now, concerning the split of the money. You said you got $200.

Do you know how much the other participants got?

A Everybody got $200.

Q That includes Melvin Kearney?

A It includes Melvin Kearney, yes.

Q Do you know what happened to the remainder of the money?

A It was put into a kitty.

Q Which kitty all of you shared?

A Yes. For food and rent and guns and stuff.

Q Thank you.

Now, you participated with Phyllis Pollard in other bank robberies, did you not?

A Yes.

Q During that bank robbery did her gun go off as she was going over the counter?

A Go off?

Q Did she fire a gun?

A Yes.

Q When did it go off? When did she fire the gun?

A Going over the counter she shot at somebody.

Q She fired it at somebody?

A Yes.

MR. CLAREY: No further questions.

MR. BLOOM: Just a couple, your HOnor.

RECROSS-EXAMINATION

BY MR. BLOOM:

MR. BLOOM: First I would like to reoffer in evidence all of the remainder of the psychiatric report.

THE COURT: Objection sustained.

MR. BLOOM: Based upon Mr. Clarey's office.

THE COURT: I know. Objection sustained.

Q Now, is it correct to say that at the time you told the psychiatrist about your relationship with Allah you didn't believe it? Right, that's what you just said?

A Right.

Q Is it correct to say you ran a little story to them?

A I ran --

Q You ran a little story down to them?

A Yes.

THE COURT: I don't know that I heard it.

Q Ran a little story down to them.

THE COURT: All right.

Q In fact, you know what that means, you told that to me, right?

A I told you --

MR. CLAREY: Objection. Mr. Bloom is testifying. Objection sustained.

Q Do you remember testifying in the Manhattan trial in December in the Southern District, questioned by defense counsel:

"Q Tell us the circumstances under which you went to Matteawan?

"A Well, at the time I was 17 years old and I was in a maximum security prison and Matteawan is a minimum security so you know I went down to see the institution psychiatrist, you know, and I ran a story down to them, you know, I told them that I was blah, blah, blah, I was a five percenter at the time."

Do you remember that question and that answer?

A Yes.

Q Is that what happened? You ran a little story down to him?

A Yes.

Q You're not running a little story to the jury?

A No sir, I am telling the truth to the best of

my knowledge.

Q I'm sorry?

A I'm telling the truth to the best of my knowledge.

Q Is that the truth to help you out of a really tough situation, Mr. White?

MR. CLAREY: Argumentative.

THE COURT: I will allow you to answer once more.

A Is that the truth to help me out of a tough situation?

Q That is the question.

A It is the truth because it is the truth.

Q Is it the truth when you lied to the doctors --

MR. CLAREY: Objection.

THE COURT: Objection sustained.

Q Was it true when you told the FBI about Margaret?

A No.

Q That was a lie?

A Right.

Q Have you learned to tell the truth, Mr. White, since you have grown up?

MR. CLAREY: Objection.

A 232

5 White-recross

THE COURT: Objection sustained.

MR. BLOOM: I have nothing further.

THE COURT: Anything else, Mr. Clarey?

MR. CLAREY: Nothing further.

THE COURT: Call your next witness.

MR. CLAREY: I will call Detective Thompson.

MR. BLOOM: Your Honor, I have something but it can wait until after the detective testifies.

THE COURT: All right. While you are getting Detective Thompson shall I excuse the jury?

MR. CLAREY: No, I believe he is right outside the door. I'm sorry.

(Pause.)

D E T E C T I V E O T I S T H O M P S O N, a witness called on behalf of the United States of America was sworn by the Clerk of the Court and testified as follows:

DIRECT EXAMINATION

BY MR. CLAREY:

Q What is your occupation, sir?

A Detective.

Q New York City Police Department?

A Yes sir.

Q Where are you assigned?

A Queens District Attorney's Office.

Q Queens County is that?

A Yes sir.

Q What is your job?

A Detective, Investigator.

Q You are an investigator for the District Attorney, is that correct?

A Yes sir.

Q Now, on June 7th, 1973, did you go somewhere early in the morning on that day?

A Yes, I did.

Q Where did you go?

A I went to the 75th Precinct in Brooklyn.

Q What happened generally at the 75th Precinct in Brooklyn?

A It was a combined effort of the Police Department and the FBI --

Q Was there a briefing that morning at approximately 6:30?

MR. BLOOM: Objection.

THE COURT: Yes or no?

A Yes.

MR. CLAREY: I would like to lead at this point for a specific purpose.

THE COURT: I won't allow matters that appear to be relevant and if you want to argue it I will excuse the jury --

MR. CLAREY: I am trying to avoid matters that appear --

MR. BLOOM: I would ask that he not lead --

THE COURT: Your efforts to answer don't --

MR. CLAREY; Perhaps I can skip over this completely.

THE COURT: Go ahead.

Q Did there come a time on that morning when you left the 75th Precinct?

A Yes.

Q Did you go to a certain location?

A Yes sir.

(Continued on next page)

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DIRECT EXAMINATION

BY MR. CLAREY: (Cont.)

Q Where was that?

A On New Lots Avenue, in Brooklyn.

Q Do you recall the number of New Lots?

A Yes, 440 New Lots.

Q And where in relation to 440 New Lots were you on that morning?

A Directly across in front of the luncheonette, in front of 440 New Lots.

Q From that position, on that morning, did you make an observation?

A Yes, sir, I did.

Q What did you see?

A At the address of 440 New Lots Avenue, I saw Fred Hilton approach from the west side of New Lots AVenue, went to sit on the stoop of 440 New Lots Avenue.

Q Now, is that the Fred Hilton that's a defendant in this case?

A Yes, sir.

Q Do you see him in the courtroom?

A Yes, sir.

The defendant sitting there.

Q Sitting where, sir?

A Right there.

Q Next to the man in the gray suit?

A Yes, sir.

THE COURT: The record shows the witness pointed out the defendant Freddie Hilton.

BY MR. CLAREY:

Q Did there come a time when you took any action with regard to this defendant Freddie Hilton that morning?

A Yes, sir.

Q What did you do?

A Approximately about 10:45, between 10:45 and 11:00 o'clock that day, the defendant was in front of 440 New Lots Avenue. At about -- between that time, a radio car pulled up to the address of 440 New Lots Avenue. The defendant Fred Hilton left the stoop, came across on the north side of New Lots Avenue.

And another five minutes, between 5 and 3 minutes, another radio car came from the east side of New Lots Avenue to -- in front of the address at 440 New Lots Avenue. The defendant Fred Hilton descended from the north side of New Lots Avenue, walked across to the south side of New Lots Avenue, and at that time I placed the individual under arrest.

Q Would you describe the arrest, please?

A Yes. At that time when I placed him under arrest in his right hand --

MR. BLOOM: I object. Excuse me. I object to the description of the arrest.

I think it's irrelevant, your Honor.

Q Was he carrying anything?

A Yes. He had a -- an automatic, a 9 millimeter automatic in his hand.

Q Did you subsequently take that automatic from him?

A Yes, sir.

Q I'll show you Government's 13 for identification and ask you to take a careful look at it and see if you can identify it?

A Yes, I can identify it. I have my initials, O.T., on the marking -- marked on the barrel of the gun.

Q So what is it?

A This is the gun that I took from the defendant that day. My initials are on the gun, it's Otis Thompson.

Q What else is in that envelope? Can you see, sir?

A Yes. It's two clips.

Q Do you know what they are?

A Yes. The clips that go inside the gun.

MR. BLOOM: I object to this, too, your Honor, as irrelevant.

MR. CLAREY: I'd rather just leave the gun in the envelope. I'd be glad again to show it to Mr. Bloom. Unless he would prefer that I take it out.

MR. BLOOM: I'm not --

THE COURT: I am only interested in the gun, not the clips.

MR. CLAREY: I'll have to ask him about the clips, your Honor.

The clips are relevant.

THE COURT: All right. Then we agree.

MR. BLOOM: Are they relevant?

MR. CLAREY: They are relevant.

THE COURT: Relevant? If you want to argue it, I'll excuse the jury.

The jury may be excused.

(The following occurred in the absence of the jury.)

THE COURT: What is the relevancy, Mr. Clarey?

MR. CLAREY: Your Honor, the gun was loaded and Mr. Hilton made a statement which will be brought

in the next few minutes that -- to the effect that he would have shot this gentleman if he knew he was a cop.

THE COURT: I won't allow that.

MR. CLAREY: I think the statement is admissible, in light of the testimony that will be brought in later, that Mr. Hilton made a statement to Agent Coulson to the effect that at the time he was arrested by Thompson he knew he was wanted for bank robbery and he would have shot Thompson if he knew he was a cop, to get away.

THE COURT: I won't allow it. I don't see it.

MR. CLAREY: Your Honor, if I may be heard? There is a theory on which it is certainly admissible. First it is admissible on his consciousness of guilt, that he had committed the bank robbery and he didn't want to be apprehended.

THE COURT: That he knew he was wanted for murder? I'm sorry. Strike it out. That he knew he was wanted for bank robber?

MR. CLAREY: Yes. That's the statement that he made to Agent Coulson on the 17th of June after this incident occurred.

THE COURT: How is that a consciousness of

guilt?

MR. CLAREY: That he wanted to -- he would have shot this officer if he knew he was an officer in order to get away to avoid apprehension for the bank robbery.

THE COURT: In other words, that the statement indicated that he would have used the gun to avoid arrest?

MR. CLAREY: That is correct.

THE COURT: Not that he just wanted to randoml shoot a police officer.

MR. CLAREY: That is correct.

THE COURT: What do you say about that?

MR. CLAREY: The context of the si ation is clear. There were police officers all over the street.

If he knew that he was approaching -- being approached by one he would have shot him, in order to escape.

THE COURT: What do you say about that, Mr. Bloom?

MR. BLOOM: I say it is irrelevant, prejudicial. Not reflective of consciousness of guilt. It is not the -- assuming the truth of it, it is not, of all

the circumstances, including, all of these police cars are around and Fred Hilton is walking around with a fairly large weapon, assuming the truth of that, that there are some other possible theories inconsistent with consciousness of guilt, that to admit something of such slight value as is consciousness of guilt, assuming that it even goes to that issue, I -- would be prejudicial and not -- A, prejudicial; and B, not probative or at least not of sufficient probative value.

THE COURT: It's put in a different light. I thought it was just a statement that indicated an intention to just randomly kill a police officer.

MR. CLAREY: No. My point is that it would imply a motive to shoot Officer Thompson, to get away.

Now, the situation was, if I could set the scene a little bit. There were --

MR. BLOOM: Excuse me, your Honor.

I ask that Officer Thompson be excused while we are setting a scene.

THE COURT: All right, Officer Thompson. Take a position outside the courtroom, please.

I assume that Mr. Clarey got all this information from Det. Thompson.

MR. BLOOM: I don't know.

MR. CLAREY: Pardon me.

THE COURT: I say I assume that you got the information from Det. Thompson.

MR. CLAREY: That's exactly where I got it.

MR. BLOOM: Maybe Det. Thompson will forget.

MR. CLAREY: All right. As is indicated, as we avoided saying, there was a -- an organized -- the police were organized with the FBI for this arrest and there were policemen on the roofs with rifles.

A call was placed, a 911, reporting "Man onthe roof with a rifle." The radio cars answered by mistake, came to the scene, ran in the house right past Hilton who was sitting on the front porch. So at that point he was home free but he still had his gun out in this position. He went across the street and Thompson was standing across the street. Didn't suspect he was a policeman. Because the policemen had just run into the house, from the radio cars. At that point he used a profanity.

THE COURT: Did Thompson testify that policemen ran into the house?

MR. CLAREY: No. Because we -- testified that they pulled up. I tried to skip over all of the details of the police coming.

THE COURT: Why did you want to bring out when you asked the question about the briefing? What was that all about? Was there a warrant for his arrest? Were they executing a warrant?

MR. CLAREY: There was a warrant outstanding at the time, sure, sure. And the briefing was to coordinate . Unfortunately, it broke down.

THE COURT: Are you entitled to bring in the statement that he knew he was wanted for the bank robbery?

(continued next page.)

MR. CLAREY: Well, I intend to attempt to bring that in, that's correct, through Agent Coulson, who took the statement, and there is a 302 on file.

THE COURT: Oh. You won't bring it out through this witness?

MR. CLAREY: He didn't take that statement. He wasn't present for that statement. I would only bring out he said "If I had known you were a copy, I would have shot you." The exact words were, "Okay, mother fucker, if I would have known you were a copy, I would have shot you."

THE COURT: That is after he was taken into custody?

MR. CLAREY: That's as he was being arrested. Almost simultaneously.

THE COURT: There is no question, you say? Just a spontaneous statement?

MR. CLAREY: Spontaneous, no question, no warnings, no anything. At that point.

THE COURT: It puts it in a different light. Conduct of a defendant on being faced with a charge.

MR. BLOOM: What charge, your Honor? So far the 3500 Material dealing with this officer talks about a warrant for bank robbery and an address, wherever it is, Oak Point -- 1355 Oak Point Avenue,

Bronx, which, of course, we all know Mr. Hilton was acquitted of. If Mr. Clarey wants that in, it's going to come in.

It's also going to come in that two weeks after the acquittal, they put this case in the Grand Jury and not before.

MR. CLAREY: How --

THE COURT: Mr. Bloom, this is not the forum to argue that, and I can tell you that.

MR. CLAREY: The acquittal certainly -- the fact that the statement was made does not become --

THE COURT: How do you meet that argument, that if there was a consciousness of guilt, there was a consciousness of guilt of the Bronx bank robbery of which he was acquitted, which merely proves that the Government failed to prove its case beyond a reasonable doubt, right, Mr. Bloom?

MR. BLOOM: That's what it proves.

MR. CLAREY: That's all it proves.

THE COURT: All right. How do you meet that argument, that if there is a consciousness of guilt, if they had a warrant outstanding, it was to arrest him on the other charge?

MR. CLAREY: Well, that's correct. The warrant outstanding was on the other charge.

3 THE COURT: Well, I do not think that is necessarily decisive, except that it is certainly confusing. We are talking about consciousness of guilt. We are talking about a specific charge. If he has committed a number of crimes and he is -- an arrest is attempted and he flees or he attempts to escape, consciousness of guilt as to what charge? As to every outstanding charge?

MR. CLAREY: That's -- it's an interesting question, your Honor, I'll have to admit.

THE COURT: It sure is and it is too speculative.

MR. CLAREY: Your Honor, I may make another offer tomorrow on it. It would only be a short amount of evidence. At this point I won't ask Detective Thompson about --

THE COURT: I do not think you have a right to do it, unless you can show me a case on it.

MR. CLAREY: However, the fact that the gun was loaded, I believe is relevant to show that he most probably carried a loaded gun on the day of the bank robbery.

MR. BLOOM: I cannot agree with that view your Honor.

MR. CLAREY: I'm required to prove that the gun was loaded, at least one gun was loaded on

4 the day of the bank robbery, and I'm certainly entitled to prove that his gun was loaded on the day of the bank robbery.

The fact that it was loaded on June 7th, six weeks after the bank robbery, indicates that it could very well have been loaded on April 10th. It's probative.

MR. BLOOM: Well, could -- what if it were empty? You'd say "Well, it still could have been." If it were empty --

THE COURT: We are talking bout reasonable inferences, and the fact that something is -- a condition exists on one day, there sometimes is an inference that it continues to exist.

There sometimes is an inference that it continues to exist.

On the other hand, the fact that a condition exists on a certain day, there is also -- an inference may reasonably -- a reasonable inference may be drawn that it existed on a previous day. Inferences go backward as well as forward. That was an argument that lawyers used to make. Inference only goes forward.

Now the question is whether this is so far away. Certainly if he were caught that night with a gun,

the same gun and it was loaded, I do not think you could argue very well that it could not be shown that the gun was loaded.

I mean, that it could not be offered in evidence. So that the jury might infer from that that it was loaded at the time of the bank robbery.

MR. BLOOM: Your Honor, I dare say, assuming arguendo that we have the issue that you have framed and that there is a clear difference between that night and is it seven or so weeks later? Is that right? Seven weeks? Assuming that we have that difference, first, to contend with, secondly the -- there has been proof that, one, well, from the woman, from the bank -- assistant bank manager, that two of the guns were loaded. There is no question and there has been proof from Avon White, that two of the guns were loaded.

THE COURT: To me that is a weak argument. You do not believe Avon White, do you?

MR. BLOOM: No; but I believe the woman.

THE COURT: Oh. I do not think the Government is precluded from showing that three guns were loaded just because they showed that two guns were loaded. I think that is a weak argument.

I think it really turns on whether you can show

that the gun was loaded -- how many weeks after the robbery, Mr. Clarey?

MR. CLAREY: Seven, your Honor. Approximately.

THE COURT: Seven weeks after the robbery.

MR. CLAREY: But there is testimony that the gun he -- he habitually carried. At least he carried it on the 9th and 10th.

MR. BLOOM: Or it looked like the gun.

MR. CLAREY: It's the same type of gun with the serial numbers scraped off.

THE COURT: There is no sense arguing that. The jury may find from the evidence that it is the very same gun. It may not have been. It may look alike, but the jury from all the evidence may determine that this is the gun, and that is the reason I am permitting that to go in.

MR. BLOOM: If I may, your Honor, the concept of a robbery while armed, the count -- makes that count different, is the concept of actual intimidation. There is not actual intimidation, assuming arguendo Mr. Hilton had a loaded -- 55 loaded guns in the car.

THE COURT: I will tell you what it does show. It's some evidence that he knew that the armed bank robbery would put lives in jeopardy. The very fact that he carried a loaded gun would indicate that he

knew the others carried a loaded gun.

MR. BLOOM: However, look at what happened. There was no -- no alleged bank robbery taking place on June 7th. How do you argue that? Maybe he just always carries a loaded gun?

THE COURT: That is what bothers me.

MR. BLOOM: Right.

THE COURT: That is what bothers me.

No, I am going to sustain objection to prove that the gun was loaded.

I think that the Government has a right to show that he carried this gun. I do not think proof that the gun was loaded seven weeks later proves that it was loaded at the bank robbery. I think it is too far away, too remote in time.

MR. BLOOM: In that event, your Honor, I have -- one of the things I delayed was a motion for a mistrial because I do not want to highlight something that Avon White said.

I have that motion on three separate grounds. One is the motion dealing -- one deals with the gun and clips that are in the envelope, that the jury has seen from the very beginning and has seen today and has heard discussion about it today.

In view of your Honor's ruling, I would submit

that the jury cannot but infer that you are talking about a loaded gun on the 7th of June, the day of arrest of Mr. Hilton. Talked about two clips.

THE COURT: I do not know that they understand that clips contain rounds. I am not sure of that.

I do not know whether any rounds are in these clips.

MR. BLOOM: We can never be sure of it, your Honor.

THE COURT: Of course.

MR. BLOOM: But I submit that based upon the testimony, the delivery and the manner in which it was discussed, we have that problem.

MR. CLAREY: I think the Court has made a discretionary ruling.

THE COURT: Motion denied.

I say that it is a very close ruling and I am just ruling against the Government because I do think that it is too far in time. I do not know what I would say if the Government pressed and said if it was a week or two or three what I would say. I think it is too -- a condition that changes too frequently or apt to change too frequently, to hold that clips found seven weeks later --

MR. CLAREY: All right. I'll call --

THE COURT: Motion is denied. Motion for mistrial is denied.

MR. CLAREY: Excuse me. Could I call the detective back? I have one more question about the --

THE COURT: Of course. You have not even identified the gun, I do not think, as the gun that he found on him.

MR. CLAREY: That's right.

THE COURT: But how are you going to take that out of the cellophane bag that you have?

MR. BLOOM: I would ask and consent that it be done now.

MR. CLAREY: All right. I will take it out. It is not necessary for custody, anyway, because his initials are on the gun itself.

THE COURT: Do the clips contain rounds, do you know?

MR. BOYD: No sir. The rounds have been separated.

MR. CLAREY: The rounds have been taken out of the clip. They're in envelopes in here.

THE COURT: Oh, I see.

All right. Only the gun and you can put the empty clip back into the gun, if you wish.

MR. BLOOM: Your Honor, while that's being done,

10 I have a motion for mistrial, on the second ground in that the aborted attempt to lay out that this was some kind of large scale effort, combined effort of the FBI and Major -- New York City Police Department Major Case Investigative Unit, cannot but create the impression that Mr. Hilton was a very much wanted man, a very dangerous man, which, although the law enforcement people may believe that to be true had no place in this or any other trial.

And unfortunately, I was not given advance notice as to the nature of the testimony, and again the jury could not help but make that determination.

THE COURT: Well, I think a corrective charge would be sufficient and I would ask you to tell -- to give me any charge that you feel is fair and I may give it to the jury, tell them to disregard the manner of the arrest, that this is submitted only if -- as evidence that the defendant in fact carried a gun and for no other reason.

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MR. BLOOM: The further ground --

THE COURT: You want to suggest a charge to eliminate that?

MR. BLOOM: The first charge, the charge that comes to mind, the nature of the charge has to do with what is the reality here. The reality here is Fred Hilton was thought to be a member of the Black Liberation Army.

THE COURT: Don't repeat the argument.

MR. BLOOM: I must make a record.

THE COURT: Just say ditto if you want to add anything. Please don't repeat the argument. It is a vain attempt to turn this into a trial that it isn't and I won't stand for it. This is a charge of bank robbery.

MR. BLOOM: I think your Honor will agree the reason the major effort was made is the reason was the law enforcement authorities thought Fred Hilton was --

THE COURT: I can't agree with that. I can't agree. I think it is exaggerated in your mind and in the mind of many others.

MR. BLOOM: Well, some of the others are involved --

THE COURT: I know.

MR. BLOOM: Well, some of the others are involved --

THE COURT: I know.

MR. BLOOM: -- are sitting there (indicating) the gentlemen sitting I know is a member of the major case unit --

THE COURT: Continue with the argument, Mr. Bloom.

MR. BLOOM: I can't now suggest a charge. May I have until tomorrow morning to do so?

THE COURT: All right, sure.

MR. BLOOM: Further, I move for a mistrial on the testimony elicited by Mr. Clarey from Mr. White this kitty was allegedly kept for rent, food, and guns. That is of course evidence of other crimes or certainly suggested evidence that Mr. Hilton was involved in other crimes, at least the crime of possession of weapons. It has no place or room in this trial and it prejudices the jury.

THE COURT: I think you asked it, Mr. Bloom, when you asked the witness how much he got and he said $200. Out of $5800, that made it appear that Mr. White was telling a tall story. I think the Government had a right to show how it was distributed. I think it is unfortunate that there was a kitty

established for guns and so forth. It would have been better if they left that out, but they can't prepare a witness for everything. You didn't know it was coming and neither did I. I will take any reasonable charge to instruct the jury it was only to explain the distribution and it isn't evidence of any other criminal activity and they can disregard it. I don't think it is prejudicial.

MR. CLAREY: The Court pointed out that I left it out on direct examination, the fact of the split. I only went into it on redirect because --

THE COURT: I just couldn't believe he only took $200.

MR. CLAREY: I didn't know he would say guns. I had no idea. I knew it was for living expenses.

THE COURT: I don't think there was an attempt by the Government to bring that collateral matter in. The defendant invited it by asking about distribution.

Are you ready to proceed?

MR. BLOOM: May I ask the material be taken off the table?

THE COURT: Yes. Will you take the clips and the rounds off the table.

A 257

4 Thompson White-

AVON ~~WHITE~~, resumed the stand and further testified as follows:

(The jury in the jury box.)

THE COURT: You may proceed.

MR. CLAREY: Yes, your Honor.

DIRECT EXAMINATION

BY MR. CLAREY (Continuing):

Q Can you identify Government's Exhibit 13 for identification? Just as it is now.

A It is a Browning Automatic 9mm gun.

Q Have you ever seen it before?

A Yes.

Q When was the first time?

A June 7, 1973.

Q What were the circumstances very generally?

A The defendant Fred Hilton had it in his hand.

Q Which hand?

A His right hand. My initials are on the gun, OT.

Q In his right hand? Was it visible in his right-hand when you first saw him?

A No, he had a yellow jacket over it.

Q In what manner?

A He had the gun and the jacket over the gun (indicating).

Q When did you first see the gun?

A When he came off the stoop.

THE COURT: Is there anything further on the issue? The only issue is whether this is the gun that the witness took from the defendant Freddie Hilton and that is all.

MR. CLAREY: I want to ask one further question.

Q Is there a serial number on the gun?

A No, it was defaced.

Q What?

A It was eradicated, filed away.

Q If you look where your hand is, can you see a spot on the gun?

A Yes, I can see a spot.

Q Where is it?

A Right here.

Q Let the record reflect the witness is pointing to the handle of the gun, the front part of the handle.

THE COURT: Do you agree?

MR. BLOOM: I haven't seen it but I will take their word for it.

MR. CLAREY: I will show it to you.

THE COURT: Any objection in addition to the ones already made?

MR. BLOOM: No, your Honor, except this is irrelevant.

THE COURT: Objection overruled, mark it.

THE CLERK: Government's Exhibit 13 previously marked for identification now marked in evidence.

(So marked in evidence.)

MR. CLAREY: No other questions.

THE COURT: Mr. Bloom.

MR. BLOOM: No further questions did you say?

MR. CLAREY: No further questions.

MR. BLOOM: Excuse me.

(Pause.)

MR. BLOOM: Just a couple of questions.

CROSS-EXAMINATION

BY MR. BLOOM:

Q How far away were you from Mr. Hilton when you first saw a gun?

A When I first saw the gun?

Q Yes.

A From approximately from here to there where you are (indicating).

Q Can you approximate that as maybe 30 feet?

THE COURT: No. The panel board in front of the jury box is 19 feet and you can add six more.

MR. BLOOM: 25.

Q Did you have your weapon drawn at the time?

A Yes sir.

Q Did you point it in any particular direction?

A Down on the ground.

Q You were coming from what kind of location in the street?

A I was on the street.

Q For how long had you had your weapon drawn and so pointed down to the ground?

A I would say approximately five or ten minutes.

Q Was it visible?

A No sir.

Q How did you keep it from being visible?

A With my hand. I covered it with my hand down by my leg.

Q Could you stand up and show the jury?

A At the time in the street I didn't hold my weapon by the trigger guard, I had it like this (indicating).

Q It was a small 38?

A An off duty 38, yes, 38 caliber.

Q And you walked toward Mr. Hilton, is that correct?

A At the time I placed him under arrest, sir,

at that time he was walking across the street from me. I was behind him.

Q He was not looking in your direction?

A He was as he first started. Then he started to go back across the street and then I placed him under arrest.

Q Did he have an attache case or brief case?

A Possibly, could be.

Q Do you remember?

A I don't recall.

Q You don't recall?

A No.

Q Well, did you voucher his property when you arrested him?

A Yes.

Q Do you know if there was a briefcase included in the voucher?

A Somebody else could have vouchered it.

Q Did you?

A I don't recall.

Q You are not saying yes or no, you are saying you don't remember?

A I don't recall.

Q Where --

THE COURT: You may be seated detective.

Q Where would one find the voucher papers?

A Well, I vouchered the gun.

Q Was anything else vouchered? You say you went to the property clerk?

A Yes.

Q Is it fair to say you don't remember one way or another whether you vouchered anything else?

A I vouchered the gun.

Q Do you remember one way or the other whether you vouchered anything else?

A I vouchered the gun at the time I arrested him.

Q And nothing else that you remember, is that what you are saying?

A I don't recall, yes sir.

Q Would there be a document that would show -- that would help you refresh your recollection as to what you vouchered?

A Yes sir. I have the voucher there. The only thing I vouchered was the gun.

Q You do remember the only thing you vouchered was the gun, is that right?

A Counsel, I put Freddie under arrest and I vouchered a gun in the 75th Precinct and I delivered it to

ballistics. The only thing I delivered to ballistics was a weapon.

Q I understand. What I am asking --

MR. CLAREY: Perhaps I can straighten it out with one question.

THE COURT: Mr. Bloom is examining. You will have your opportunity, Mr. Clarey.

Q I know and we understand what you did with the gun and that was your main focus once the arrest was made.

My question is, apparently you do not remember one way or the other whether there was a briefcase or attache case, is that correct?

A I don't recall.

Q My question is, if you did so voucher or handle a briefcase, would the voucher receipt refresh your recollection as to whether or not you did that?

A If I did it there?

MR. BLOOM: If there is a voucher receipt, I would like to see it.

MR. CLAREY: I would like to see a lot of things myself, --

THE COURT: No speeches, Mr. Clarey. Do you have any voucher?

MR. CLAREY: No.

THE COURT: That is in the files of the Police Department of the City of New York?

THE WITNESS: Yes.

Q You filled that out and signed your name to it?

A You asked me --

Q Am I correct?

A I vouchered the gun, counsellor.

Q When you voucher a gun or anything, you sign your name to it?

A Yes.

Q And you in words or substance explain briefly where you got the material, right, a gun --

A Yes.

Q Am I correct?

A The gun I vouchered.

Q Let's talk about the gun. In the ordinary course of your business, you would explain a few words, gun taken from subject Fred Hilton?

A Yes sir.

Q In front of 440 New Lots Avenue?

A Yes.

Q And you would sign your name?

A Yes.

MR. BLOOM: I ask that they produce as 3500

Material.

THE COURT: Well, Mr. Bloom, you heard the Government say it doesn't have it in its possession.

MR. BLOOM: It is his duty to get it.

THE COURT: You have a right to subpoena that. I will sign a subpoena forthwith --

MR. BLOOM: I think your Honor should instruct the jury it is their duty to provide the 3500 Material.

THE COURT: No. How can the Government supply something not in their possession? That is absolutely wrong, Mr. Bloom.

MR. BLOOM: I submit it is their duty.

THE COURT: We will have no further argument.

MR. BLOOM: I ask it be done outside the hearing of the jury.

THE COURT: The jury may be excused.

(The jury left the courtroom.)

THE COURT: I might say, for the record, that too many defense attorneys ask the Government to produce records that they know the Government does not have and also know they can subpoena if they want to.

And that is not 3500 Material.

MR. BLOOM: I submit it is. It constitutes a

prior statement by this witness relevant to the direct testimony given.

THE COURT: When was the last time you read 3500, Mr. Bloom?

MR. BLOOM: I would say probably in November of 1973.

THE COURT: Does it say statements oral or written that are in the possession of the Government? Or control of the Government?

MR. BLOOM: I believe within the control of the Government. I am not certain, your Honor.

THE COURT: Is a record of the New York City Police Department under the control of the United States Government?

MR. BLOOM: Your Honor, let me show you what has been given to me as a matter of fact with regard to this.

THE COURT: I know what they have given to you, Mr. Bloom.

MR. BLOOM: I would like to tell you they have given to me a form, Detective Bureau unusual occurrence form, which is a New York City Police Department form.

(Continued on next page)

THE COURT: That's because they had it. What they have they must turn over.

That's a little different than a record they do not have.

MR. BLOOM: That is not my interpretation. Apparently our interpretations of 3500 vary.

I submit to your Honor that it's their duty to provide it.

THE COURT: Do your best to get it, anyway, but it is not 3500 material and it was improper for you to make a demand of a record that you knew was not in their control.

MR. BLOOM: It is in their control, your Honor.

THE COURT: Do you think the United States government controls every government in the country? Don't you?

MR. BLOOM: No, but they control the New York City Police Department enough to provide what they did provide.

THE COURT: Well, that is another improper inference you made, Mr. Bloom, not the first one in this trial.

MR. CLAREY: Your Honor, as long as we're out

of the hearing of the jury, I'll object on the grounds of relevance. I don't see what the relevance ofit is.

THE COURT: I do not either, but I have a policy. Give them as much as you can.

MR. CLAREY: Perhaps an offer of proof at this time can save some time? Other officers --

THE COURT: Mr.Bloom is saying he does not know but he would like you to produce his cross examination. If you do not have it, he wants you to get it. That is the attitude of many defense attorneys.

MR. CLAREY: If it's a problem with a briefcase, there are other officers in on the arrest and it's very apparent that there were a lot of officers in on that arrest.

THE COURT: And how --

MR. CLAREY: This was not the only officer.

THE COURT: How can the contents of the briefcase be relevant to the introduction of the gun?

MR. BLOOM: It would be an interesting -- it would be an interesting matter and a different story if indeed -- if Mr. Hilton -- and again we're talking in the absence of the jury -- about a man

believed to be a very dangerous person, if this officer saw a gun, this particular weapon in the hand of this man Fred Hilton, Fred Hilton would be here in 50 pieces today. He wouldn't be here and, your Honor, I believe --

MR. CLAREY: Oh.

MR. BLOOM: -- can understand the reasoning behind that. You can ask Twymon Meyers about it.

THE COURT: Do not have me concur with those outrageous statements, Mr. Bloom. I do not believe a word of it.

MR. BLOOM: Based upon the experience that the New York City Police Department and the FBI had with a man by the name of Twymon Meyers, I think your Honor can take some kind of notice.

THE COURT: All right. Now, what is the relevancy of what was in that briefcase?

MR. BLOOM: What was in that briefcase was that gun. It was not in anybody's hand. And this officer (indicating) well knows it.

THE COURT: Your cross-examination has not produced it yet.

MR. BLOOM: That's right, because I haven't seen any voucher to --

THE COURT: How do you know? Were you there, Mr. Bloom?

MR. BLOOM: I believe my client. That's why.

THE COURT: Well, all right. I haven't heard your client so I wouldn't know.

MR. BLOOM: I've heard him, your Honor, and I know.

THE COURT: All right. You have that advantage. Now seat the jury.

(Jury present.)

CROSS-EXAMINATION

BY MR. BLOOM: (Cont.)

Q Just one question, Detective Thompson. Is it not a fact that Mr. Hilton did have a briefcase and the gun that you found was not in his hand but was in the briefcase, which was in his hand?

A Counsellor, when I placed Fred Hilton under arrest, he had the gun in his right hand and the jacket over his right hand.

Q And you're sure of that; right? Right?

A I told you, counsellor, when I placed him under arrest, he had the gun in his right hand and the jacket over it. Yes sir, he had the gun in his hand.

Q What color jacket?

A A yellow jacket.

Q° What kind of jacket was it?

A A golf jacket, sir.

Q Was that vouchered, do you know?

A He had it.

Q Was that vouchered?

A He had it. We gave it back to him, counsellor.

Q He kept it; is that what you are saying?

A Yes, as part of his garment.

Q Is that one of those jackets you could see through? Transluscent?

A Counsellor, it was a jacket, a golf jacket. You couldn't see through it. It was a yellow jacket.

Q Okay. And to your recollection, there was no briefcase and the gun was not in a briefcase?

A Don't recall. I saw him with a gun in his hand, counsellor.

Q Did you shoot at him?

A I could have shot him, sir, but I didn't.

Q Because he wasn't facing your way; right?

A He had a gun, counsellor. He told me he would have shot me --

THE COURT: No. Just answer the questions.

A (Continuing.) I didn't shoot him, sir.

MR. BLOOM: I have no further questions.

THE COURT: Anything further?

MR. CLAREY: Just to clear up one thing.

REDIRECT EXAMINATION

BY MR. CLAREY:

Q You say you saw the gun with the jacket over it. Would you describe exactly how the gun was held and how the jacket was over it? How you saw it?

A If I could use the gun there for a demonstration, I will do it.

THE COURT: All right.

Q I'd like that, yes.

THE CLERK: Mr. Clarey.

MR. CLAREY: Up there.

A (Continuing.) It's like a golf jacket, was a three-quarter jacket. He had the gun in his hand, like this (indicating), that -- my jacket is a little heavy. It was a summer jacket, like a golfer's, the kids wear, and at that time he had the jacket -- the gun was like in right over the jacket, like this here (indicating). That's where -- the way he had the gun in his hand.

MR. CLAREY: Thank you.

MR. BLOOM: Indicating with the -- may the record reflect that a part of the point of the gun

seemed to be sticking out?

THE COURT: That is the way you showed it; is that right.

THE WITNESS: Yes sir.

THE COURT: Anything further, Mr. Clarey.

MR. CLAREY: Nothing further.

THE COURT: Mr. Bloom, anything?

MR. BLOOM: Yes. Just one question in that regard.

RECROSS-EXAMINATION

BY MR. BLOOM:

Q And this was at a time when there are two patrol cars with uniformed policemen around?

A They weren't there, sir. They had left the vicinity to go up on a roof.

Q Sir --

A Yes.'

Q When you first saw Mr. Hilton, you say you saw him with the gun for some five minutes; right? Right?

A Yes.

Q And you say you saw him sitting on the stoop; right?

A No. I say when the radio car, counsellor, pulled up and they went past him, he came off the stoop. That

could be two or three seconds.

Q Did he have the gun at the time?

A Yes.

Q When the radio car --

A He had it in his hand with the jacket over it, counsellor.

Q With part of the nose sticking out?

A Yes sir, showing.

Q With uniformed police officers that were --

A With uniformed police officers went past and went to the roof, counsellor, and he came off the steps, off the stoop.

Q Why don't you try to follow my question, okay?

At the time the uniformed police officers came by in their two police cars --

A One police car pulled up, sir.

Q One police car, two uniformed men; right?

A Yes. He was sitting on the stoop and they ran right past him.

Q Why don't you wait until I ask the question, okay?

A Yes sir.

Q At that time when he was sitting on the stoop?

A Yes sir.

Q Did he have the jacket over a gun, just as you've shown us?

A Yes sir.

Q That was at a time when two officers went past him?

A - Yes sir.

(Continued next page.)

Q Directly -- how far away from him were they?

A I'd say -- it's a stoop. How big is a stoop? How apart is a stoop?

Q I wasn't there. You were. Can you tell the jury?

A I could only approximate. About six feet. And they passed him, ran up to the roof, the steps, and then the roof. He came down off the stoop.

Q You tell me when to stop when I am the distance the policemen were from --

A Counselor, I told you, you asked me approximately. I gave you approximately the stoop is about five feet, six feet and he was sitting on the rail. The officer ran past him. Your defendant came down off the stoop and came across the street, counselor.

Q And at that time as they went past him, would this (indicating) be about the distance they were?

A I guess approximately, sir. Maybe a little -- between five and six feet. The stoop is about five or six feet wide.

Q It's your testimony that at that time Mr. Hilton had a point -- maybe an inch or so of the gun sticking, that you could see; right?

A Yes, sir.

MR. BLOOM: O.K. Thanks.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. CLAREY:

Q Officer or Detective Thompson, were those police officers that arrived working with you?

A No, sir.

Q Were they there for a different purpose or the same purpose?

A A different purpose, sir.

Q And they were going to the roof; is that correct?

A Yes, sir.

Q For something that was on that roof?

A Very true.

Q And they had no interest in who was sitting on the steps; is that right?

THE COURT: Objection sustained.

MR. BLOOM: Objection.

THE COURT: Sustained.

Anything further?

MR. BLOOM: Yes. One question.

RECROSS-EXAMINATION

BY MR. BLOOM:

Q As they went by Mr. Hilton, did you hear them

say, "Look, we don't have any interest in you, we're just going to the roof"?

A I didn't hear that, counselor.

Q "So we don't care about the gun"? Let me finish. Did they say anything like that?

A I was across the street. I didn't know. They were proceeding to go to the roof, counselor. They ran past Fred Hilton.

Q Within a few feet of him; right?

A The stoop is between five and six feet wide, counselor.

Q O.K. And they ran within a few feet of him?

A Yes, sir.

Q And he had the gun sticking out in part at that point; right?

A Counselor, I told you, the jacket was covering the gun.

Q You tell us, if you can, yes or no.

THE COURT: The question is whether at that point when you were sitting on the stoop and the police officers ran by him, was a part of the gun sticking out from under his jacket?

THE WITNESS: As he was facing this way (indicating), your Honor, like I was directly across,

I couldn't see a thing, but the jacket, the gun and probably they were going up the apartment, they weren't looking at -- they were -- how I understand, there was supposed to be --

THE COURT: No, I do not want you to tell what --

THE WITNESS: They ran right past your defendant.

THE COURT: Anything further?

MR. BLOOM: No, sir.

THE COURT: Anything further?

MR. CLAREY: Nothing further.

THE COURT: You may step down. Thank you.

We will suspend at this time. The Marshals will see that the jury gets back here tomorrow morning again in time to continue the case at 9:30.

Do not talk about the case. You will be eating together. You might feel that there is a temptation to say something about it, but withstand that temptation. Do not talk about the case at all, at no time.

The jury is excused.

(The following occurred in the absence of the jury.)

THE COURT: Mr. Clarey, I want you to use your

best efforts to bring that voucher in, and if you are interested in it, Mr. Bloom, I will sign a forthwith subpoena directing them to produce it.

MR. BLOOM: I'm satisfied, your Honor, with the way the testimony went, with regard to that issue now.

THE COURT: You are not interested in the voucher?

MR. BLOOM: I am not so interested -- I think it's a duty of Mr. Clarey to provide it and I am not so interested that I want to subpoena it.

THE COURT: You want the best of both worlds.

MR. CLAREY: How many cartwheels shall I turn?

THE COURT: You would like it not to be produced hoping there is something in there that you did not want to use anyway.

All right. Produce it.

MR. BLOOM: Your Honor can rule as you will.

THE COURT: I am doing that. I am not ruling as you will, Mr. Bloom. I am ruling as I will.

MR. BLOOM: Fine.

THE COURT: That's right.

MR. BLOOM: All I can say is, I cannot force your Honor to rule one way or another.

THE COURT: That's right.

6 MR. BLOOM: I can only make applications as to what I think is reasonable.

THE COURT: All I say is that it is the duty of the Government to turn over any statement that concerns itself with the direct evidence of a witness that is in the Government's possession or control.

I know of no case that requires the Government to go hunting through the four corners of the world to find a statement that might be in existence only because a defendant demands it. The defendant has a duty, too.

In any event, the duty aside, produce it so we can have it marked.

Anything further, gentlemen?

All right, gentlemen. See you tomorrow.

MR. BLOOM: What time did you say, your Honor? I'm sorry.

THE COURT: Same time.

MR. BLOOM: 9:30?

THE COURT: Same place. 9:30.

(Whereupon, a recess was taken until 9:30 a.m., July 17, 1974.)

* * *

Mr. Clarey.

MR. CLAREY: Yes, your Honor.

THE COURT: Your next witness.

MR. CLAREY: I call Mr. Weber.

THE CLERK; Stand over here, please. Face me and raise your right hand.

P H I L I P W E B E R , having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. CLAREY:

Q Where do you live, Mr. Weber?

A 32-42 89th Street, Jackson Heights.

Q Is that close to Northern Boulevard in Jackson Heights?

A A few hundred feet from the corner.

Q And is that north of Northern Boulevard?

A It's north of Northern Boulevard.

Q In fact is it in the vicinity of the Jackson Heights Savings and Loan Association?

A Across the street from it.

Q Where -- Could you describe the relationship between your home and the Jackson Heights Federal Savings and Loan in terms of location?

A The apartment building is directly opposite

the entrance to the parking lot behind the bank.

MR. CLAREY: I'll mark this photograph next in line for identification, please.

THE CLERK: Photograph marked Government's 19 for identification.

Q Can you identify what is shown in that photograph? Tell us generally what is shown, if you can.

A The front of the bank is shown, and the building that I live in is the second building from the front of the photograph.

Q Could you put a mark on that photograph where your building is?

THE COURT: Is there a pen there?

MR. CLAREY: No, that one was broken, your Honor.

Q Just put your initials where your building is. Thank you.

MR. CLAREY: At this time I'll offer this photograph into evidence.

THE COURT: Show it to Mr. Bloom.

MR. CLAREY: I show it to Mr. Bloom.

MR. BLOOM: I have no objection.

THE COURT: Let it be marked.

THE CLERK: Government's Exhibit 19 previously

marked for identification is now marked in evidence.

Q Mr. Weber, directing your attention to the morning of April 10 of 1973 at approximately 11:00 a.m. where were you, sir, if you recall?

A I was standing in front of my residence.

Q On the sidewalk?

A On the sidewalk.

Q What if anything did you see at approximately that time?

A I saw three Negroes walking south on 89th St. towards Northern Boulevard.

Q On what side of 89th Street were they walking?

A They were on the east side of the street, the side that the bank is on.

Q And that would be the opposite side from your apartment, is that correct?

A Yes.

Q Where were you standing? Did you see them go -- Where if anywhere did you see them go?

A I saw them go to Northern Boulevard and turn the corner.

Q Which corner?

A The corner of Northern Boulevard and 89th St.

Q And where in relation to the bank did they

turn the corner?

A Right at the bank. Towards the entrance of the bank.

Q Now, could you see the entrance to the bank from where you were standing?

A No.

Q Could you see the door? Did you see anything else shortly after that?

A A few minutes later three Negroes came from the corner of Northern Boulevard at 89th Street, turned the corner and hurried into a car that was parked on 89th Street facing north.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. CLAYMAN (Cont'd):

Q Was anyone in the car when you first saw it, sir?

A The driver.

Q Did you get a look at him?

A No, I couldn't see his face.

Q Did you make any other observations of this car?

A Only that the car was a light blue car and that they were in a big hurry to get into the car.

Q Did you notice anything about the car?

A Not until they drove away.

Q What happened when they drove away? What did you see?

A I saw that one tire was very low.

Q Which tire?

A The right rear.

Q The right rear, sir?

A As far as I remember, it was but I --

Q Which way was the car going in relation to you?

A The car was going north and I was on the driver's side of the car.

THE COURT: Well, is right rear the driver's side --

THE WITNESS: No.

THE COURT: -- or the passenger's side?

THE WITNESS: I saw it as the passenger's side.

BY MR. CLAREY:

Q Did you take any action with regard to this car, sir?

A Yes, I made note of the license plate.

Q Do you recall that license number. now?

A Yes, 998 Queen David Adam.

Q And when you say you made a note of it, did you write it down?

A No, just a mental note.

THE COURT: Queen David Adam, meaning Q --

THE WITNESS: QDA.

THE COURT: QDA?

THE WITNESS: Yes, sir.

Q What did you do with regard to this license number, if anything?

A I went around to Northern Boulevard to find out if anything happened there and when I had been advised that the bank had been held up, I waited for a patrol car.

THE COURT: No, strike out the bank was held up.

Q What did you do?

A I waited for a police car to arrive and gave

the officers the license numbers.

Q Now, could you indicate on that -- do you see on that photograph where this car was parked, where you saw the car parked?

A Just about where the truck is in the photograph.

Q Okay. Would you put a mark there, sir, please?

THE COURT: How are you making it?

THE WITNESS: With an "X".

Q Is the place where you were standing visible in that photograph?

A It's blocked by the truck.

Q Now, sir, did you make any observation with regard to the driver of that car as the car went past you?

A No. I wasn't paying attention to him, I was just interested in getting the license number.

MR. CLAREY: Thank you.

No further questions.

CROSS-EXAMINATION

BY MR. BLOOM:

Q Good morning, Mr. Weber. My name is Bloom. I am the attorney for the man on trial. I just have a very few questions for you.

The street, 89th Street, is a northbound street, it runs north at least from Northern Boulevard, that block is northbound?

A That's right.

Q The traffic pattern?

A That's correct.

Q Now, about how far -- you were on the west side of the street; is that correct?

A That's correct.

Q About how far from the corner would you say you were, the corner of Northern Boulevard?

A About a couple of hundred feet.

Q And about how far -- well, did you see the car driving into 89th Street?

A No, I just noticed it standing there as the three people headed towards it.

Q Now, was that car in relation to Northern Boulevard closer to Northern Boulevard than you were or further than you were?

A Closer to Northern Boulevard.

Q So that if you looked toward Northern Boulevard and across the street at the car, you would be able to see the front windshield?

A Yes.

Q Now, what time was this, about 11:00 in the morning?

A That's correct.

Q Is it correct to say that -- well, how long did you observe the car once the people got out and to the time they came back and pulled away?

A I didn't see them get out of the car. I only saw them going towards the car when they came from Northern Boulevard.

Q Oh. Well, let me -- did you see them walking? Did you see three people walking at some point between the car and Northern Boulevard towards Northern Boulevard first?

A No, I saw three people walking along the street. They may not have been the same ones.

Q I see, I see.

So is it fair to say that you didn't associate those three people with the car at first?

A No. In fact when they went by, the car wasn't there.

Q I see.

Now, when the people got into the car, is that when you are saying the car was somewhat closer to Northern Boulevard than you were?

A That's right.

Q Okay.

Now, were you ever shown any photographs, mug-shots of people?

A Yes.

Q When was that?

A The day of the crime and sometime after that.

Q On two different occasions?

A Yes.

Q Were you able to pick out any faces?

A No.

Q Now, at the time when the car pulled away from the curb, were you -- did you notice was there any kind of garbage truck or anything that blocked their way on 89th Street?

A No. As far as I know, the street was clear.

Q So in fact, they got away pretty quickly; one of the things --

A Yes

Q -- that called your attention was they had a low tire and they were moving pretty quickly?

A Yes.

Q How far is it, a very long block to the next northern block?

A Yes, it is.

Q What is the next block to the north?

A 32nd Avenue.

Q And were you able to observe the car reach 32nd

Avenue?

A No, I didn't see it go into 32nd Avenue.

MR. BLOOM: All right, Mr. Weber.

I don't have any further questions, your Honor, but I would ask that the Jury be excused for a moment, please.

THE COURT: The Jury will be excused.

(Jury excused.)

MR. BLOOM: Most respectfully, your Honor, may I ask that Mr. Weber step outside for just a moment?

THE COURT: You can take a position outside the Courtroom doors.

MR. BLOOM: Your Honor, may I recall in Mr. Clarey's opening statement he indicated that Mr. Weber's view of the person or persons in the car was so limited that he was not even shown photographs for identification.

I don't know where Mr. Clarey got that information but apparently our information from the witness is contrary to that and whether or not it was correct in the opening statement is the issue now.

I would like to see the photographs that he was shown and I would like to know if they included obviously any of the four people mentioned here or

indeed any of the five people mentioned here.

MR. CLAREY: Your Honor, there is no indication in the FBI report that any photographs were shown to Mr. Weber.

The reason for this -- and I have been across this before, is that when there is a negative identification, no record is kept of that identification.

I don't know which photographs were shown to him. I would assume it is very possible they are related to this case. I will ask Agent McCartin now.

MR. MC CARTIN: No, your Honor. When an identification is not made, it is considered negative investigation.

THE COURT: Do you know whether photographs were shown to this witness by the FBI?

MR. MC CARTIN: I believe so, yes, sir.

THE COURT: There were?

MR. MC CARTIN: But no identification was ever made. A long series of photographs would have been shown, numerous ones.

THE COURT: In books, you mean?

MR. MC CARTIN: No. They are loose photographs.

THE COURT: And no record at all is maintained?

MR. MC CARTIN: When an identification is not made, no record is kept?

MR. BLOOM: Well --

MR. CLAREY: But I can't see the harm. The man said he did not and could not possibly identify the driver.

MR. BLOOM: He didn't say that.

THE COURT: All right, Mr. Bloom, go ahead.

MR. BLOOM: He didn't say that at all. He said --

THE COURT: Well, would you like to ask more questions of the witness rather than Mr. Clarey?

MR. BLOOM: I would like to ask questions of whoever showed photographs -- I would like to know if Fred Hilton's photograph was shown to him. That's what I would like to know. Very simple.

(Continued on next page.)

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MR. MC CARTIN: I don't know, your Honor. I would speculate it was probably included in the package of photographs that was shown. 462

THE COURT: Well, there is one way to find out. Why don't you ask the witness?

MR. BLOOM: How is he going to know, your Honor?

THE COURT: He now sees Fred Hilton.

MR. BLOOM: Well, your Honor --

THE COURT: He might now be able to testify as to whether he was ever shown a photograph of Fred Hilton. I will allow you to do that outside the hearing of the jury if you wish.

MR. BLOOM: Let's try it that way. I --

THE COURT: All right. Let's try it that way. Bring the witness in. Bring the witness in, please.

(Witness Weber resumed the stand.)

CROSS- EXAMINATION

BY MR. BLOOM: (Cont.)

Q Just a couple of questions, Mr. Weber.

A Sure.

Q The pictures that you were shown, about how many -- over --- was it on two occasions?

A Yes.

Q About how many would you guess that you saw?

A The first time there were I think about two books. The second time, one.

THE COURT: Do you know whether it was the Police Department that showed them to you?

THE WITNESS: The Police Department show me the pictures the first time in the bank. And the second time an FBI agnet.

Q Was this the FBI agent, by chance?

A Yes.

Q This gentleman, Mr. McCartin?

A Yes.

Q Now, do you see the gentleman sitting over there in the light green shirt?

A Yes.

Q All right. Can you tell us if you know, one way or another if his picture was shown to you?

A I don't recall.

Q When you say books, you are not -- we can't tell from that -- about how many pictures in each book? Or all together, how many pictures did you see?

A I would say at least fifty, 65 pictures.

Q Okay, and I gather you picked out no pictures?

A No pictures at all.

MR. BLOOM: All right, thank you, Mr. Weber. I don't --

THE COURT: Well, I will bring the jury in and you can take it from there. I don't know what application you would like to make.

Would you like to make an application outside the hearing of the jury?

MR. BLOOM: Yes, your Honor, I would like whatever photo spread was shown to Mr. Weber on both occasions to be produced in court.

THE COURT: I understand that's quite impossible but do the best you can, Mr. McCartin. If you can determine a way of doing it, report it to the Court. If you don't report it I will assume that you are asked to do the impossible.

All right, seat the jury, please.

MR. BLOOM: Excuse me one second. In the absence of that, your Honor, perhaps we can get a stipulation from Mr. Clarey that a photograph -- among the photographs on one or both occasions, was a photograph of Fred Hilton.

THE COURT: Are you ready to stipulate on that?

MR. CLAREY: I will stipulate because I am reasonably certain that Hilton's photograph would have been included. However, I don't know how many photographs and I can only say on the one occasion, the FBI. I can't stipulate for the Police Department on both books.

THE COURT: So the stipulation was that in all probability one or more was shown or that one or more was shown.

MR. CLAREY: In all probability, Mr. Hilton's photograph was included among a spread of photographs shown to Mr. Weber.

MR. BLOOM: Your Honor, I have a problem with that. The problem arises as follows:

That would suggest in the jury's mind that when bank robberies are committed -- I am serious now -- in all probability Fred Hilton's picture is shown.

THE COURT: Well, Mr. Bloom, you decide the stipulation you want and I will see if I can get it from the Government, all right?

MR. BLOOM: All right.

That Fred Hilton's picture was among those shown to Mr. Weber on either one or both of the

occasions, and I will ask -- I will clarify that there were two occasions -- I am not sure we have that inthe record before the jury yet, that there were two occasions when Mr. Weber looked at photographs.

But after that --

THE COURT: Well, will you stipulate that they were in the group shown by the Police Department, too.

MR.CLAREY: Yes, that stipulation will be satis factory.

MR. BLOOM: Just so we get the word that in both sets of photographs shown to Mr. Weber a picture of Fred Hilton was included. That's what I am going to say.

MR. CLAREY: All right.

MR. BLOOM; All right.

THE COURT: Please call the jury.

(Jury in.)

BY MR. BLOOM:

Q Mr. Weber, if I may, just one or two more questions.

THE COURT: Well, first the Government has conceded that the defendant Freddie Hilton's

photograph was shown to this witness on two occasions, when he was -- when photographs were submitted to him.

Q Could you just tell the jury, Mr. Weber--

MR. CLAREY: Excuse me. That's included within a series of photographs?

MR. BLOOM: Yes, I was just going to ask that. I was just going to ask that.

Q Could you tell the jury the circumstances under which -- am I correct that on two occasions you looked at a number of photographs?

A That's correct.

Q And when was the first occasion?

A The first occasion was right after the robbery.

Q And was that in the bank?

A In the bank.

Q Some hour or two or three later?

A That's true.

Q And about how many photographs did you look at on that day?

A I would say fifty or 75.

Q And is it fair to say that you were not able to pick out any photograph of anybody that you had seen that

day?

A That's correct, I couldn't pick any out.

Q And about how long after that day did you again look at photographs?

A About a few weeks.

Q And was that shown to you by the FBI?

A That's right.

Q In fact, by the gentleman sitting here --

A THat's true.

Q -- Mr.McCartin?

And about how many photographs were included, did you view on that day?

A About fifty.

Q Was that in the FBI office or at your --

A At my home.

Q At your home. And is it fair to say that on that day you did not pick out any photograph of anybody either?

A I did not.

MR. BLOOM: Thank you, Mr. WEber.

THE COURT: Mr. Clarey, any redirect?

REDIRECT EXAMINATION

BY MR. CLAREY:

Q Now, it was your testimony you did not get

a look at the driver of the car?

A No, I didn't get a look at him.

MR. CLAREY: No other questions.

RECROSS-EXAMINATION

BY MR. BLOOM:

Q Well, to clarify that, am I correct -- how far away from you -- when you noticed the three people hastily getting into the car, how far were you from that car?

A A couple of hundred feet.

Q A couple of hundred feet?

A Yes.

Q And did the car drive past you?

A The car drove past me.

Q And within what distance did the car come of you?

A Maybe 20, 25 feet.

Q Maybe the distance between us or a little less?

A Yes, in fact a little less.

MR. BLOOM: Okay, thank you.

THE COURT: As it went by you, which part of the car was nearer to you, the driver's side or the passenger side?

THE WITNESS: The driver's side.

Q And from which plate did you take the number, sir?

A The rear plate.

Q The rear plate after it past you?

A Yes.

Q And at which point did you see the tire?

A I believe it was after the car went by, as it was going by.

Q The tire was on the right-side of the car?

A Yes, I believe it was.

THE COURT: Anything further?

MR. BLOOM: Just a moment.

Q Just in that regard, you didn't look at a plate until after the car and the passengers, occupants, rather, were past you, right?

A Right.

MR. BLOOM: All right, thank you.

THE COURT: Anything further? You may step down. Thank you.

(Witness excused.)

THE COURT: Next witness.

Is there going to be some time before the witness gets here?

MR. CLAREY: I'm afraid so.

THE COURT: All right, the jury may be --

MR. CLAREY: He's up in my office.

THE COURT: The jury may be excused for a few moments.

(Jury out.)

THE COURT: Please let us know when the witness arrives, Mr. Clarey.

MR. CLAREY: Yes, I will.

(continued next page.)

THE COURT: Seat the Jury.

(Jury present.)

THE CLERK: Would you come forward, please?

MR. CLAREY: Mr. Sullivan, please.

J A M E S F. S U L L I V A N, Detective, Shield 2318, assigned to the Forensic Technician Section, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. CLAREY:

Q Detective Sullivan, you're with the New York City Police Department; is that correct?

A Yes, sir.

Q And with what section, please, in case this Jury didn't hear you when you were sworn?

A Forensic Technician Section.

Q What kind of work do you do?

A We respond to crime scenes, photographing and search for evidentiary materials which might assist in the investigation.

Q What types of evidentiary materials?

A Latent fingerprints, blood, ballistics evidence.

Q Do you have any special training in this area,

THE COURT: Please bring in Professor Edgar.

MR. CLAREY: Step up, please.

R O B E R T W. E D G A R , called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLAREY:

Q Where do you work, Professor Edgar?

A At Queens College, in Flushing, New York.

Q And what do you teach there, sir?

A I'm a Professor of Education. I work with teachers.

Q On April 9, in the afternoon, did you drive into the parking lot at Queens College?

A I did.

Q April of 1973? Excuse me.

A I did.

Q Which parking lot did you drive into?

A It's numbered 6, parking lot number 6.

Q Is that a faculty parking lot or --

A Primarily so. If there are any spots left over, students may apply.

Q What kind of car do you drive, sir?

A I did at this time drive a 1967 Chevrolet.

Q What color was it?

A It was a sort of bluish green, aqua color.

Q Do you recall the license number in 1973 of that car?

A Yes. I still have the same license. It's 998QDA.

Q Thank you.

What time did you arrive at that parking lot on April 9, sir?

A About 1:45.

Q What happened when you arrived there, if anything? What did you see as you arrived there?

A I drove into parking lot 6, rather large parking lot, and since I came in the middle of the afternoon I had to look for a space. I looked down this long row of cars and saw at the end of the row a possible spacd, so I drov down to that spot.

Q Did you see anything as you approached that spot, sir?

A Well, as I drove into the spot, to park my car, it faced a field, which is sometimes used as an athletic field and I saw two young men there, not too far away from the place that I had parked.

Q After you made that observation, what did you do?

A I proceeded to get out on the driver's side of my car. I took out my keys from the ignition and was turning to lock my car when these two men approached me and when they got close, one of them pointed a revolver at me.

Q The one who was pointing a revolver at you, ca you describe him, sir?

A I think of the two of them in relation to each other, the one that had the revolver was the heavier one and in facial structure, he had a rather round, heavy face.

Q Did the one who was pointing the revolver at you say anything to you, sir,at that time, now?

A The only thing that I can recall is he told me to get into the car.

Q Did you see what the other one was doing or where he was at that time?

A My recollection is that he was in back of the heavier set fellow, who circled around behind me and then he was in front of me. And the heavier one told me to get into the car.

Q What did you do when he told you that, sir?

A I got into the car.

Q Then what happened?

A Then he told me to move over and put the key to the ignition in the ignition lock.

Q Did he, did either one of those two men do anything at that time?

A As I moved over, the slimmer one got into the driver's seat and the heavier one with the revolver encircled my car and got in the back seat, back of me.

Q In back on the passenger side?

A On the passenger side.

Q You were riding in the front passenger seat?

A Right.

Q Did the car -- did the three of you drive away in the car at that point, sir?

A He turned the ignition on, backed the car out and started down the ally or whatever you'd call it, the lane, started down the lane that I'd come in on.

Q And from there, where did the three of you go?

A At the end of the lane he turned south and exited at a gate from the College grounds on Melbourne Avenue.

Q And was there any conversation in the car during this trip, sir?

A During the total trip, which I haven't told

you at all, but during this part of the trip I think he said -- he said to me, "Don't move and we won't hurt you."

Q Who siad that, which one of these two men?

A The driver. The slimmer one.

Q Did he face you when he said that?

A To my recollection, he did, yes.

Q Now, the trip continued.

Where did it go, sir? Where did you go?

A They turned east on Melbourne Avenue to Kissena Boulevard. Then south again on Kissena Boulevard to Jewel Avenue -- not precisely sure of the name of the street. It may be Parsons. Parsons probably is it. They turned north, to Parsons and proceeded to the Long Island Expressway. This street brought them to an entrance into the Expressway. Brought us. And we went on the Expressway and at the very next exit, we left the Expressway.

We had gone under a bridge, on 164th Street and the exit brought us out at 169th Street.

Q Now, how long were you in the car with these two men all together?

A I would say, ten to fifteen minutes.

Q And where were you dropped off? What location?

A They turned south on 169th Street and

proceeded a block or two. I don't know the precise name of the street. And told me to get out.

Q Was that in proximity to the Long Island Expressway?

A It was about a block or two south of the Expressway.

Q Had you driven on the Expressway with them, did you say?

A We were from one entrance to the next exit on the Expressway.

Q Now, during the entire trip, did you have any conversation with the man in the front seat that was driving?

A He repeated the statement to me that if I didn't move, we wouldn't -- he wouldn't or they wouldn't hurt me. They also -- I think it was he who said that I should take out my wallet, put the money on the front seat beside me, take off my watch, put that on the front seat, beside me.

Q Did he face you at all when he was saying these things to you?

A He -- he at least turned partially toward me, yes.

Q How much toward you, sir?

A Enough so I could see the front of his face.

Q Now, based --

A But probably not the left side.

Q Okay, sir.

Based on the observation, your observation that day, April 9th, can you describe that man who was driving the car?

THE COURT: Professor Edgar, did you watch him continuously as he drove?

THE WITNESS: Not full face, because I was very frightened. But I had a definite -- it was sort of this look at him (indicating).

THE COURT: But did you more or less keep him in continuous view, at least partially?

THE WITNESS: I think so.

(continued next page.)

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THE COURT: Part of his face for practically the entire pieriod of time?

THE WITNESS: Yes. Certainly I had a definite impression of it, his face.

THE COURT: Did you turn your head toward him during this --

THE WITNESS: Yes. .

THE COURT: -- ride? You did not look straight ahead, in other words?

THE WITNESS: Sometimes and sometimes not. Sometimes I looked at him.

THE COURT: All right.

BY MR. CLAREY:

Q Can you give us a description of that man who was driving the car as best you can recall?

A The first impression that I got was when they approached me on foot and as I say, I had the impression of a-- two men. The heavier man I thought was slightly taller. One was slim. The other heavy. One had a round face and the other had a face of rather bony structure.

Q Which one of the two had a bony-structured face?

A The man who became the driver of the car. Sat to my left and whom I -- whose face I saw repeatedly

during the journey.

Q Sir, I'll ask you to look around the Courtroom at this time and based on your recollection of the day in question, April 9th, can you make an identification?

MR. BLOOM: I object to the form of the question.

THE COURT: Overruled. You see that man in Court today?

MR. BLOOM: Your Honor, I don't object to that question. I object to Mr. Clarey's question.

THE COURT: Do you see him in Court?

THE WITNESS: Yes.

THE COURT: Will you point him out?

THE WITNESS: He's sitting right there.

THE COURT: Let the record show the witness pointed out the defendant Freddie Hilton.

MR. BLOOM: May I state the ground of my objection to Mr. Clarey's question?

THE COURT: The witness answered mine, but if you'd like to put it on the record, go ahead.

MR. BLOOM: Mr. Clarey's question said, included the phrase, "based upon what you say on April 9th." Of course, that's what we're here to test.

THE COURT: That's right.

MR. CLAREY: Perhaps --

MR. BLOOM: Excuse me. With all due respect to the witness, it's not for him to determine what it is based upon.

THE COURT: That will be a finding that I must make.

BY MR. CLAREY:

Q Sir, on what do you base your identification in Court today?

MR. BLOOM: I object to that, your Honor. It calls for a conclusion.

THE COURT: No. I will allow it in the form. Can you tell us whether the identification you made was based on the impression made during the ride that you described?

THE WITNESS: Yes, it was.

THE COURT: Of course, the date was bright? The natural light was good? Is that correct?

THE WITNESS: That's correct, sir.

BY MR. CLAREY:

Q Sir, on the 6th of July, 1973, were you shown a series of photographs by an FBI agent?

A My memory for the date is not precise. Approximately that time I was shown a series of photographs by an

FBI agent.

Q Sir, can you identify 34? Do you remember the photographs that you saw that day? Do you think you can remember?

I'll ask it -- can you identify Exhibit 34?

THE COURT: You can disassemble it. Take the clip off and look at them.

Do you recall whether those were the series of photographs shown to you on that day?

Look at them all, Professor. Do you recall if those are the photographs?

THE WITNESS: I didn't expect to be able to say yes, but the answer is yes.

THE COURT: All right.

BY MR. CLAREY:

Q What was the manner in which those were shown to you, sir? Can you describe it, please?

A Much as was done now. I was handed a group of photographs and I was told -- this took place at my office at the college. I was told to go through them and to see whether or not I could identify any of these photographs as being the man that had been the driver in the car.

Q Now, is that what was said to you, sir? What you've just said now?

A To the best of my recollection.

Q Was anything else said to you?

A Nothing.

Q Was anything -- any suggestion made as to which photograph you should select?

A No.

Q Now, do you recall by looking at those photographs, do you recall what you selected on that day, if anything?

A Yes. I can recall it. This was the photograph.

THE COURT: May I have it? That should be marked 34A.

THE CLERK: So marked.

(So marked.)

Q Did you select any other photograph or do you recall?

A No.

MR. BLOOM: Excuse me. Is that no, he didn't recall or he didn't select?

THE COURT: Did you select any other photograph out of the group?

THE WITNESS: No.

Q And that photograph you've just selected, who was it, how did you -- who was it, if you know? I mean,

excuse me.

In relation to the events of April 9th, is there any connection between those events and that man?

A I identified him as the man who drove my car.

MR. BLOOM: May I see the photograph that Professor Edgar selected, the particular one that is marked?

MR. CLAREY: Yes. I'll have to have you select it because I was not here.

Was it -- on the record, which photograph was it?

THE COURT: It was 3A.

MR. CLAREY: 34A.

THE COURT: 34A, rather.

MR. BLOOM: I haven't seen it. That's all.

THE COURT: Do you concede that it s a photograph of the defendant?

MR. BLOOM: Sure.

THE COURT: All right.

BY MR. CLAREY:

Q Now, on January 17th of 1974, did you attend a line-up procedure in this building, sir?

A Yes.

Q Where was it conducted, do you recall?

A In the basement of this building.

Q Can you describe generally what happened during that line-up procedure?

A You and the defendant's lawyer and I and I think might have been someone else there, went into a small room of which only a very small slit was allowed to be seen, to view a room that was there. There was nobody in the room when we came in there and went into the small, sort of closet-like space.

I was told, to my recollection, that there would be several people brought in and that I was to look at them as long as I wanted to look at them, that I was to have them -- that I was to relay to someone if I wanted them to move, turn right or left or any -- anything that I wanted in the process. And, in other words, I was instructed what to do and then at a point after we had been there some time, I was told to look through this small opening.

There were a group of men, I don't recall exactly how many men. I looked at the row of men and immediately recognized the man who had driven my car. However, just to make absolutely sure, since it was the right side of his face that was the primary basis for my identification, I had asked someone, perhaps you, Mr. Clarey, I don't know, to have them turn to the left, so I could see the right

side of the face. This led to my feeling and I turned immediately during this period, no one talked to me at all -- I identified a person by number. They had numbers on them. As the person who had driven the car.

Q Now, sir, prior to your being brought into that room, the room you just described, was any suggestion made to you by anyone concerning which man you should pick out?

A No.

Q Were you told at all that one of the participants would certainly be in that line-up?

A Not in those terms. I think I had been told that a person who had been apprehended would be in the line.

Q But that was the extent of what you were told, is that correct?

A Yes.

Q Can you identify Government's -- I'll offer

MR. CLAREY: I'll offer 33 into evidence at this point. Does it have to be offered in -- I can offer it in the presence of the Jury.

Q Government's 33 for Identification, sir, can you identify it?

A These were the men I looked at.

Q do you recall which number you picked out, sir?

Which man you picked out?

A Number 4.

THE COURT: Any objection, Mr. --

MR. BLOOM: Not for purposes of the hearing, your Honor.

THE COURT: It may be marked for purposes of the hearing.

THE CLERK: So marked Government's 33 in Evidence.

(So marked.)

MR. CLAREY: No other questions.

THE COURT: Mr. Bloom?

MR. BLOOM: Your Honor, may I have a couple of minutes just to review the 3500 material that was given to me just before the testimony?

THE COURT: All right. As soon as you're ready, let me know.

(Recess taken.)

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(Continued on next page.)

(The following occurred in the absence of the jury.)

THE COURT: All right, Mr. Bloom.

CROSS EXAMINATION

BY MR. BLOOM:

Q Good afternoon, Professor Edgar. My name is Robert Bloom. I'm the attorney for the defendant. Perhaps you remember seeing me. I just have a few questions for you.

The person who had the gun, that was the heavier of the two people, and he sat in the rear; is that correct?

A Right.

Q Now, did you see any other guns?

A No.

Q On April 9th, I'm talking about?

A No.

Q Now, did either of the men have gloves?

A I can't recall.

Q Well, how about the driver in particular? You were able to see him for, I'd say, somewhere between five and fifteen minutes? Am I correct about the time?

A Right.

Q And you were observing him from a sidelong glance, I guess you would say, most of the time; is that correct?

A Right.

Q Were you able to observe on this April day whether or not he was wearing any kind of gloves?

A My recollection is very poor. My recollection, however, would be, No, he was not.

Q Okay.

Now, was one of the men telling you something about being drug addicts or dope fiends?

A During the course of the time that they were in the car with me, the heavier fellow in back said something like this, to the best of my recollection: "You know the drugs are out there. We got to have them."

Q Okay.

A That's about the extent of it.

Q Just so it's clear, that was -- None of that was said, as you recall, by the man in the front, the driver?

A No.

Q And also the man in the front, the driver, in no way displayed a weapon to you?

A No.

Q Now, in the conversation -- Let me withdraw that.

The relative heights of the men, I believe you said that you believed the heavier man to have been slightly taller, is that correct?

A Correct.

Q I wonder if Mr. Hilton could stand up, please, for a moment.

Is it fair to say that the man in the back was taller than the man you see standing up now, Mr. Hilton?

A My impression is not changed by seeing him by himself.

Q Let me ask you this. Is it your impression that the man you saw as the driver was shorter than the man who just stood up?

A He's the man.

Q As you recall, you're positive he's the man?

A Yes.

Q Now, on the -- You indicated to Mr. Clarey when he asked you some questions that you looked on July 6th or so of 1973, you looked at some photographs?

A Right.

Q And you picked out the one photograph which was separately marked here, and do you remember this gentleman in the brown suit, Mr. McCartin, being the FBI Agent who showed you those photographs?

A I think he was the one. I've seen a couple, you know.

Q Okay.

A I think -- Yes, I do recall it was Mr. McCartin.

Q Okay. Now, am I correct -- I didn't count, but there were six or seven photographs shown to you on that day?

A Yes.

Q That day in July, which was -- which we are talking about, some couple of months after your car was taken?

A That's correct.

Q Okay.

Now, am I also correct, you picked out one photograph, the one you indicated here, the photograph of Mr. Hilton, and you did not pick out any other photograph?

A That's correct.

Q Now, on the day -- one the day after your car was taken, did you have an interview with Special Agent William Baker, or a -- If you don't remember the name, an FBI Agent?

A The sequence I'm very uncertain about, but I did have -- Well, it could not have been the day after I -- after 9th, because at this time my only recollection at this time was that I was dealing with the New York City Police, about the theft of my car.

Q Well, do you remember --

A And the day after, I think, I went to the Precinct to look through hundreds of photographs that they gave me.

Q So you did look at photographs beforehand; is that correct? In other words, the day after your car was taken, you

looked at photographs, and you described it as hundreds of photographs; right? And do you recall, were you able to select any photographs from those?

A At that time, no.

Q From those hundreds.

Now, do you know now, as you sit there, whether or not you viewed a photograph of Fred Hilton on that day, April 10th?

A No, I do not.

MR. BLOOM: All right. Your Honor, I would ask for that photo-spread.

THE COURT: In the light of the finding that I am about to make, Mr. Bloom, I think it is useless.

MR. BLOOM: Well, it may be useless for this hearing, your Honor; but I'm going to make the same application, and I would like to read, out of the presence of the jury, the last paragraph of the report that is dated -- interviewed on April 10th, dictated on the 13th, by Special Agent William Baker, after the descriptions and so on, the last paragraph.

"Dr. Edgar was furnished for his review photographs of known bank robbers in the New York area, and photographs of known militants with the Black Liberation Army (BLA). He reviewed these photographs, but failed to make

an identification."

Again, your Honor, I would -- It may not be relevant in your view as to this hearing, and that your Honor may be prepared to rule that there was sufficient independent opportunity to observe on April 9th. However, I would like to present to the jury the fact that, if it's true -- and I have no doubt that it's true -- that indeed the professor looked at Fred Hilton's picture on April 10th, and did not select it.

THE COURT: Was any picture selected to you from among those that were shown to you by the New York City Police?

THE WITNESS: They opened up file drawers, and said, "Go through them." And I --

THE COURT: Was that it?

THE WITNESS: And I spent a couple of hours, but he's talking about a Federal Agent, and I have a vague recollection.

THE COURT: No. We are talking about the Police Department show of the photographs.

THE WITNESS: They did not use a spread technique. They had, as I say, files of photographs, and they gave me tremendous bundle of them, and I did try to go through them and look at them, and I made no identification.

MR. BLOOM: I should say, your Honor, in the New York -- in the Southern District trial, at my request, Judge Bauman directed the Assistant United States Attorney, Mr. Truebner, to contact the New York City Police Department, which has a special book, not containing very many pictures, containing, as I recall, somewhere between 12 and 18 photographs, including Mr. Hilton's, of people who have been identified in the newspaper, and in my experience as an attorney, as members of the Black Liberation Army.

May I ask? Excuse me.

BY MR. BLOOM:

Q Did you see such a book, with cellophane pages, in addition to the methods that you had described? And I am talking about the day after your car was taken?

A I can't recall the form in which they were presented to me. My recollection -- My best recollection is that they were individual things, not in book form. But I, you know, couldn't swear to that.

MR. BLOOM: All right. Thank you.

In terms of the hearing and what I would hope to do at trial, your Honor, I want -- I want to be able to tell the jury, as -- undoubtedly true, that Professor Edgar did not select, went by the picture of Fred Hilton

on April 10th.

THE COURT: How would that affect his in-court identification?

MR. BLOOM: Well, the fact is, the following time he was shown, the 6th, he was shown but seven photographs, seven photographs. Now, I don't know. I know, for example, that -- I know I've seen Twyman Myers' photograph. I've seen Melvin Kearney. I know all the faces of all the people, all seven people. In fact, I don't have to know them. They're in the photographs that were displayed.

THE COURT: The only question that relates to identification in the Police Department procedure is whether anything that happened there unfairly suggested --

MR. BLOOM: That's correct.

THE COURT: -- this defendant as the perpetrator, and from the description that Professor Edgar gives, nothing in that procedure affected his in-court identification.

MR. BLOOM. I -- I'm sorry.

THE COURT: All right. When we come to the FBI procedure, I find that the procedure was fair, and did not suggest the defendant as the perpetrator, but I think, more important is the last premise upon which I find that there is no sense going any further.

I find that the witness had the opportunity, and did in fact observe this defendant for more than five minutes -- it could have been up to fifteen minutes -- while he was driving the car, that his in-court identification was made from that impression, and not from anything that happened after that, and in fact, had I found that the New York Court procedure was unfair, and the FBI procedure was unfair, I would, nevertheless, permit Professor Edgar to testify.

And I quote, United States ex rel Phipps, against Follett, 428, F. 2d, 912, an opinion by Judge Friendly. "The effort must be made to determine whether before the imprint arising from the unlawful identification procedure there was already such a definite image in the witness' mind that he's able to rely on it at trial without much, if any, assistance from its successor. See United States against Wade, and so forth."

"In making this subtle determination, much will depend on the witness' initial opportunity for observation and also on whether he was motivated to make a careful observation of the perpetrator. U. S. ex rel Sam Valentine Zelker, 446, F. 2d, 857. We are most impressed by the fact that the girl had a full thirty seconds to view the attacker's face."

fls Taling about more than five minutes.

MR. BLOOM: If your Honor will permit me to finish my cross-examination perhaps your Honor will be affected by the questions and answers.

THE COURT: I expect your cross-examination will go to credibility and this witness' ability to remember the things he's seen. That is separate and apart --

MR. BLOOM: May I finish?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. BLOOM (Continuing):

Q Am I correct, Professor Edgar, the first time you picked out a picture, the picture you indicated of Fred Hilton, was approximately from seven pictures?

A Correct.

Q Am I also correct that you did not say that that was the man, you said it strongly resembled the man?

A (No response.)

Q Let me show you for your guidance, and perhaps it will refresh your recollection, Exhibit 29 for Identification.

Am I correct when you selected the picture of Mr. Hilton you indicated there was a strong resemblance rather than your saying this was the man?

A I haven't a recollection of the words I used.

They were recorded in this fashion.

Q Am I also correct, having read that exhibit, that you did pick out another picture as well from the group of seven as being a man strongly resembling the other person?

A In the second case I felt quite strongly. I probably did say, "strongly resembled."

Q Am I correct that as of now as opposed to ten minutes ago you do recall in July of '73 you did pick out a second picture from the group of seven?

A Yes.

Q A few minutes ago you did not recall that, is that fair to say?

A I don't remember the context of the previous question.

MR. BLOOM: That's all the questions I have.

THE COURT: Anything further?

MR. CLAREY: Nothing further.

THE COURT: I restate the finding I made: It is clear to me that this witness, this witness' in-court identification was made on the basis of what he saw during the ride in the car on April 9, 1973, unimpaired and in no way re-invigorated or refreshed by two identification procedures. I find nothing in

either procedure which suggests unfairness. I affirmatively find that the exhibiting, by the FBI agents, of the seven photographs, was fair. I find the line-up was fair.

Please seat the jury.

MR. BLOOM: Before the jury comes out, I would ask for the photograph spread that was shown to the Professor on April 10th.

THE COURT: That is denied as being totally immaterial. Just for the purpose of the record I will ask the Government to attempt to comply with the request.

MR. BLOOM: I would like to be able to show the jury that on the first opportunity to observe, to make a photographic identification the day following the incident, among the photographs shown was Mr. Hilton's and Professor Edgar was unable to select Mr. Hilton as one of the people who took his car.

THE COURT: Do you think you can get that after the lunch hour?

MR. CLAREY: The photographic spread is not intact. I will ask the agent.

THE COURT: I am talking about the Police Department, not yours.

MR. CLAREY: The April 10th photographic spread is not intact.

AGENT McCARTIN: No, it is not.

THE COURT: That was at the New York City Police Department?

AGENT McCARTIN: No, I thought you were referring to the photographic spread we utilized.

THE COURT: I thought you were asking for the 75 or 80 photographs that Professor Edgar said he saw at the New York City Police Department.

MR. BLOOM: I believe it was hundreds.

THE COURT: Was it hundreds?

THE WITNESS: It was a large file and I spent several hours sort of going through them.

THE COURT: Isn't that what you are asking for?

MR. BLOOM: What is reflected in the report is not by a New York City police officer but a special agent, Special Agent William Baker. It indicates he interviewed Professor Edgar on the 10th of April and Dr. Edgar was furnished for his review photographs of known bank robbers in the New York area and photographs of known militants.

THE COURT: Was that for the purpose of showing the Police Department's photographs of known militants?

MR. BLOOM: No, for the purpose of looking at photographs viewed by Professor Edgar and included was a photograph of Mr. Hilton, and that was not selected on the date following the taking of the car.

THE COURT: Can you comply with that request?

AGENT McCARTIN: It would be virtually impossible to gather photographs of the known bank robbers in the New York area.

THE COURT: Do you know if the defendant's photograph was shown among those shown?

AGENT McCARTIN: I have no idea.

THE COURT: Will you please have Special Agent Baker here.

AGENT McCARTIN: He is assigned to the House Appropriations Committee in Washington, D.C.

MR. CLAREY: He is on leave of absence from the FBI.

AGENT McCARTIN: Yes.

THE COURT: Is there anyone else in the organization who can testify as to what photographs were shown and whether or not the photograph of Fred Hilton was among them?

AGENT McCARTIN: Not to my knowledge, your Honor.

MR. CLAREY: I have doubts whether Mr. Hilton's

photograph was in there. It couldn't have been this particular photograph taken in June. It must have been from some prior arrest if --

THE COURT: That is pure speculation.

MR. CLAREY: It is speculation. He photograph could very well have been there. It might have been from an arrest 10 years ago. If it were there at all.

THE COURT: So you can't meet the demand of the defendant?

AGENT McCARTIN: No, your Honor, it would be absolutely impossible.

THE COURT: Will you make an effort to try to find out where Mr. Baker is to see if he is available?

AGENT McCARTIN: I will. I have to call the United States Congress, House Appropriations Committee.

THE COURT: All right.

Seat the jury.

MR. BLOOM: Excuse me. Before we seat the jury, I have a motion. My motion is to preclude the testimony of Professor Edgar in that based our immediate discussion I have not been provided with complete 3500 material. Part of the material that I am entitled to --

THE COURT: Mr. Bloom, I asked you yesterday

7 when you last read 3500. Since that time have you again --

MR. BLOOM: If you think I am wrong, rule against me. O.K.?

THE COURT: O.K.

MR. BLOOM: I cannot direct you to rule.

THE COURT: O.K. is not legal terminology. O.K., Mr. Bloom, denied.

MR. BLOOM: All right.

THE COURT: I thought 3500 is based on Section 3500.

MR. BLOOM: Based on Section 3500, that is correct. I also say on general grounds I ask that the testimony be precluded in that I am unable to meaningfully cross-examine without that disclosure.

THE COURT: Denied.

(The jury entered the jury box.)

R O B E R T W . E D G A R , a witness called on behalf of the United States of America, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. CLAREY:

Q What is your occupation, Mr. Edgar?

A I am a Professor.

Q Where?

A Queens College in Flushing, New York.

Q What do you teach?

A I am a Professor of Education. I teach teachers

Q How long have you worked in that capacity?

A I just completed my 26th year at Queens College.

Q Did you work on April -- you did work on April 9, 1973; is that correct?

A Yes.

Q On that afternoon, did you drive into a parking lot at Queens College?

A I did.

Q Approximately what time?

A 1:45 in the afternoon.

Q Did something occur as you were parking your car? Excuse me -- Did you make any observations as you were driving to a parking space?

A I was going into what is known as Parking Lot 6 on the Queens College Campus. It is a very crowded parking lot. There is one lane going down. And quite often there is no parking space available.

I drove down the lane and in a distance I saw what appeared to be a space. I drove my car down and I saw there was a space there and I pulled my car into that space.

Q Did you make an observation at that point?

A I noticed there were two men on the field that I was pointed towards, maybe 30 or 40 feet from me as I pulled into the space.

Q What did you do at that time, sir?

A I only observed them casually and I stopped my car. I had a briefcase. I took that out and I started to step out of my car. I closed the door and was about to put my key in the door to lock it when these two men approached me.

Q What type of car did you have then?

A I had a 1967 Chevy.

Q What color?

A It was a bluish-green color, aqua color.

Q Do you recall the license number on that day?

A The license number was 998QDA.

Q Is that still your license number?

A Yes.

Q Now, as you were locking your car, what if anything happened?

A By this time these two men were very close to me and one of them had a revolver in his hand and ordered me to get back into my car.

Q Can you give a general description of those two men?

A At this point, my impression of them was they

were quite different in build. One of them was slim. The other one was heavier set. I also had the impression that the heavier set one I thought a little taller than the slimmer one.

Q Which one did you see pointing the gun?

A The heavier set one.

Q Was anything said at that time?

A Beyond the statement, "Get into the car," no.

Q What did you do when that was said?

A I obeyed what they told me to do. I opened the door and got in the car. The next thing I remember was being told to move over to the passenger seat.

(Continued on next page.)

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Q Do you recall which one said that?

A Probably the slim one, because he then got into the car and took the driver's position in the car.

The heavier one went around the back of the car, and got into the back seat right in back of me, on the passenger's side.

Q What, if anything, happened next?

A As I got in, I recall now the slimmer one told me to put the ignition key in the lock. I did that. And then he turned the car on, the motor started, he backed the car out, and started to back down the lane that I had only a minute or two before come up.

Q Did the three of you drive out of the parking lot at that time?

A Yes, we drove down the lane to the campus street, turned south to the gate, which is on Melbourne Avenue. It is called the Melbourne Exit.

Q Then where did the man drive you and the other man?

A He turned left at the gate, which would be east to Cassina Boulevard, turned right, or south, to Jewel Avenue, turned east again on Jewel Avenue, to, I think it is, Parsons Avenue, turned north now on Parsons to the Long Island Expressway. He came close to the point of an entrance. He entered

the Long Island Expressway, driving east. He drove east one exit, passing the overpass of 164th Street, and exited. That exit comes out at 169th Street. Then he turned south again, to the best of my recollection, about a block or so. At this point, he stopped the car, and he told me to get out.

Q What did you do at that time?

A I got out at that point.

Q Was anything taken from you during this ride in the car?

MR. BLOOM: Object on.

THE COURT: Overruled, I will allow it.

A I was told to take out my wallet, take out the money, and put it on the front seat beside me. To take off my wristwatch, and put that on the front seat beside me.

And they said, any valuables that I had. That's what the extent of it was. I don't wear any rings or anything.

Q Do you recall which one of these people said that to you about the watch, wallet, and money?

A That I wouldn't clearly recall. I think it was the driver.

Q How long did the entire drive take, approximately?

A I would estimate it from ten to fifteen minutes.

Q During the course of that trip, was there any conversation in the car?

A Yes.

Q Prior to you being let out of the car --

A Yes.

Q What was the conversation, can you recall?

A The first thing, and I think the driver was the one who said this to me, was, "Don't move and you won't get hurt." And that I think he repeated again at least once more during the course of the trip.

Q Go ahead. Excuse me.

A At one point, of course, they told me what they wanted me to do about my valuables. And one other thing I recall was the man in the back, the heaviest-set man, said, in some kind of -- I didn't understand it clearly, something to the effect, "There are drugs out there, and we've got to have them."

Q Was his speech slightly slurred, do you recall?

A I think so, slightly.

Q Now, when the man driving spoke to you, did he face you at all during that trip?

A I would say in a three-quarter way. I don't know -- I can't swear that he faced me full, but he turned towards me to tell me things.

Q Did you get a look at his face?

A I got a very full look at the right side of his face and front of the face.

Q Can you give us a description of that man, based on your recollection of April 9, 1973?

MR. BLOOM: Objection.

THE COURT: Overruled.

A My initial impression was he was slim, and as contrasted to the other man, who gave me the impression of being heavier, and fuller-faced.

In the car, I got a very clear impression of the bone structure of his face. I got an impression of clear jawbones and so on. I recall that very clearly.

Q Any other bone of the face?

A Mainly the facial structure is what I remember.

THE COURT: During the ride, did you look straight ahead, or did you turn towards him?

THE WITNESS: Only partially, in the sense I looked about like this (indicating). I was frightened.

MR. CLAREY: Let the record reflect, when describing the bone structure, the Professor pointed to his cheekbone with his right hand.

Q I will ask you to look around the courtroom, Professor, and ask if you can make an identification at this time?

A Yes. That is the driver of the car (indicating).

THE COURT: Let the record show the witness pointed

out the defendant Freddy Hilton.

MR. BLOOM: Let the record also note the only black man seated here is Mr. Hilton.

THE COURT: That is perfectly obvious to the jury.

MR. BLOOM: Not obvious to the record, your Honor.

THE COURT: All right.

Q What did you do after you got out of the car, Professor?

A After they drove away, I ran up the street. I saw a young man repairing his truck. I assumed that he must have lived there. I asked if I could use his telephone, and explained to him I had just been robbed. And he took me into the house, and I called 911 on the telephone.

Q Was anything left in your car? Any property of yours besides the watch and wallet?

A I am a golfer, and I think I had three pairs of golf shoes in the back trunk. And that was the only thing, to my recollection, in addition to what I was carrying.

THE COURT: I intend to suspend very shortly, because the lunch has arrived. If it is convenient at this point --

MR. CLAREY: I can complete direct examination in approximately five minutes.

THE COURT: Then you will do it after lunch.

MR. BLOOM: My cross-examination will be two or three minutes. If we may --

THE COURT: All right, we will go ahead.

Q Approximately July 6th of 1973, Professor, were you shown a group of photographs?

A Yes.

Q I will show you Government's Exhibit 34 for identification.

Do you recognize those photographs?

A Yes.

Q What are they?

A They appear to be a group of people charged with crimes. Police photographs.

Q Have you ever seen that group of photographs before today, sir?

A This appears, to the best of my recollection, to be the spread of photographs that were shown to me in July.

Q By an FBI Agent?

A Yes.

MR. CLAREY: I will offer these photographs into evidence, marked in a series.

MR. BLOOM: I would like to see them for a second.

(Pause.)

MR. BLOOM: I have no objection.

THE COURT: Let them be marked.

THE CLERK: Government's Exhibits 34 and 34-A, previously marked for identification --

MR. BLOOM: Just a second. I would rather not push on my cross-examination. Perhaps we can have lunch now if it is here.

THE COURT: We will suspend for lunch. We are taking an extended lunch hour today, and we will continue the case at 2:30.

THE CLERK: Government's Exhibits 34 and 34-A, previously marked for identification, are now marked in evidence, consisting of seven photographs.

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(So marked in evidence.)

(A recess was taken at this time until 2:30 this afternoon.)

End AM

(continued on next page.)

AFTERNOON SESSION

THE COURT: Are you ready to proceed?

MR. CLAREY: Yes, your Honor.

MR. BLOOM: Yes, your Honor.

THE COURT: Seat the Jury.

(The Jury took its place in the Jury Box.)

THE COURT: Good afternoon, I think we are ready to proceed. Mr. Clarey, will you continue?

ROBERT W. EDGAR, called as a witness, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. CLAREY (continued):

Q I believe, Professor, we left off at a point where you were looking at Government Exhibit 34 in evidence, is that right, sir?

A Yes.

Q Can you identify that series of photographs?

A To the best of my recollection, this is the series of photographs that were shown to me in July.

Q By an FBI agent, is that right, sir?

A Yes.

Q Can you describe the manner in which they were shown to you, what was said when they were shown?

A My recollection is that this took place in my

office at the college. That they were presented to me in a package together and I was told to take a good look at them, to spend as much time, to do with them whatever I wanted to and to study them and to see whether any one of them was the man that was involved in the taking of my car. I did this.

Q Was anything else said to you to suggest you should select any one particular photograph?

A No.

Q What did you do?

A I went through and I selected this photograph.

Q Do you recall specifically selecting that photograph, sir?

A Yes.

Q Is there a number on the back of that photograph?

A Yes.

Q What is the number?

A 34A.

Q Government Exhibit 34A in evidence?

MR. CLAREY: Your Honor, may I pass Exhibit 34A amongst the Jury at this time?

THE COURT: Give it to the Foreman.

(The Jury looked at the photograph.)

Q Now, that was on July 6 of 1973 or thereabouts, is that right, sir?

A Right.

Q On January 17, 1974, Professor, did you take part in a line-up procedure?

A I did.

Q Where did that take place?

A In this building.

Q And can you tell us what happened on that day?

A I was asked to come to this building to your office and after I arrived I was told that I was to go with you to a basement place. We went down there and the physical setting was there was this room and then I noticed a door here with some covering over a window. It turned out that we went into that small room and to the best of my recollection it was you and the FBI agent and the defense counsel.

Q Mr. Bloom was it?

A Yes.

THE COURT: I assume defendant has no objection to this line of testimony?

MR. BLOOM: No, your Honor.

Q All right, sir.

A Then I was instructed in the procedure that I was to follow. I was told that I was to look through this small opening and that a line of men would be there and that I should make, take all the time I wanted, I was told, and that if I

cared to, I could ask you to have the men moved, turn, do anything that I wanted them to do.

Q And what happened at that point?

A The instructions having been completed, after a moment or two, I do not recall exactly how long, I was told that I now could look through the opening and I looked. There were a number of men there and I methodically looked, starting at the left, first, second and so forth and I came to one and I had a positive feeling of recognition. However, since it was the right side of his face that I had the strongest impression of I asked you to have the men turn to the left so I could see the right side of their faces, which you did. That made me feel even more certain and then I did turn to you and I said I did have an identification to make.

Q I show you Government Exhibit 33 in evidence, sir. Do you know what is shown in that photograph, do you recognize it?

THE COURT: This photograph is marked for identification.

MR. CLAREY: I am sorry, I thought it was in evidence.

Q Do you know what is shown there generally, sir?

A Yes.

Q What is it?

A The line of six men.

Q The line-up you viewed on January 17, 1974?

A To the best of my recollection, it is that.

MR. CLAREY: I will offer it in evidence at this time.

THE COURT: Any objection?

MR. BLOOM: I have seen it, I have no objection.

THE CLERK: Government Exhibit 33 previously marked for identification now marked in evidence.

BY MR. CLAREY:

Q Can you tell us which man you selected on that day?

A Number four.

MR. CLAREY: May I show this to the Jury?

THE COURT: Give it to the Foreman.

(Photograph was passed to the Jury.)

MR. CLAREY: I have no further questions.

THE COURT: Mr. Bloom?

MR. BLOOM: I have just one or two questions.

CROSS EXAMINATION

BY MR. BLOOM:

Q Good afternoon. These two men who approached you in the parking lot in Queens College, did either of them have weapons or guns?

6

A Yes.

Q How many of the men had guns?

A To my knowledge, one.

Q Was it that gentleman seated over at the table there or was it the other man?

A It was the other man.

Q To your knowledge, did you ever see a gun of any description in the possession of Mr. Hilton, sitting over there?

A No.

MR. BLOOM: Thank you. I have no further questions.

THE COURT: Is there anything further, Mr.Clarey?

MR. CLAREY: Nothing further, your Honor.

THE COURT: You may step down.

MR. BLOOM: Your Honor, there is something I would like to say out of the presence of the Jury.

MR. CLAREY: The Government rests, your Honor.

THE COURT: As soon as the jurors are through looking at the photograph I will ask them to adjourn.

MR. BLOOM: Perhaps we may come to side bar?

THE COURT: All right.

(A side-bar was held without the hearing of the Jury as follows:)

MR. BLOOM: Your Honor asked a little while ago

if I had any objection to the line of questioning and as I did not want to say in front of the Jury in view of your Honor's ruling with regard to the photos shown to Mr. Edgar on April 10, 1973, I felt that the wisest strategy was not to contest the identification by Mr. Edgar as to the April 9 incident in view of any inability to prove he, Mr. Edgar, observed a photograph of Mr. Hilton on April 10.

THE COURT: The April 10 showing was at the New York City Police Department?

MR. BLOOM: I believe he went to a particular precinct.

THE COURT: Is that right?

MR. CLAREY: I believe that it what he testified to.

THE COURT: Have you made any inquiry whether any record was kept because in my humble opinion it does not in any way bear on the issue of the admissibility of that identification, but it has something to do with defense's right to cross-examination.

Mr. Bloom chose not to ask him any questions about that and I am at a loss to understand why because that was permissible if he had any cross-examination as to how many photographs and whether Hilton's photograph was amongst those and he chose not to ask questions.

MR. BLOOM: Obviously the man testified that he saw hundreds of photographs and he was unable to say one way or the other whether or not it included in those photographs Mr. Hilton's photograph.

I dare say although your Honor characterizes it as a showing at a New York City Police Department precinct, there is a report interview reflecting a showing by a special agent, I think it is Baker, of the FBI.

THE COURT: 3500 material of witnesses were turned over. If you are talking about your limitation of corss-examination or inability to cross-examine because we do not have available information in the control of the New York City Police Department, my answer to you is the same I gave you before, you can bring that in. You can bring in the police officers who supervised the identification procedure. I am just asking that the Government give whatever they have. As a matter of fact, I would suggest to the Government you assume for these purposes that his picture was there. It does nothing more in attacking the credibility of the witness who says he saw this defendant in a car for ten or fifteen minutes.

If you say, "I concede amongst the pictures shown to Professor Edgar was a picture of Hilton" --

MR. BLOOM: It is too late now. If it had been done before my view as to certain questions would have been different.

(continued on next page)

THE COURT: Well, I do not know.

MR. CLAREY: Professor Edgar is still here, you can re-call him.

MR. BLOOM: My objections have been objections to a certain line of questioning, your Honor. Your Honor asked if I had a particular objection to a particular question.

THE COURT: I will tell you why I asked the question. I am not sure that proof that they made prior identifications is admissible. I thought that you might object on the ground that proof he made prior identification is not admissible but perhaps on cross-examination --

MR. BLOOM: Once you made a rule with regard to the protection of photographs, whatever photograph was shown on April 10, once your Honor made that ruling, my position was then to appear to contest the identification --

THE COURT: I thought my ruling was clear. I thought I said it had nothing to do with the right of the witness' in-court identification, of the admissibility of the evidence of the witness and the in-court identification and I said I do not care how highly suggestive those procedures could have been or might have been, that under the case I cited, Fibbs against Fuller, that this in-court identification was clearly

based --

MR. BLOOM: I am not talking about that ruling. I am talking about the ruling with regard to the production of the spread shown on April 10th.

THE COURT: I know, but that ruling did not preclude your cross-examination or your right if the proof was available if you used it on cross-examination. It went to credibility.

MR. BLOOM: As a technical matter it did not preclude it but as a strategic matter, however, I am limited if I cannot have solid proof he did look at the picture; it is futile.

THE COURT: Do you want an adjournment until tomorrow?

MR. BLOOM: It does not help me. What happened damaged me then.

THE COURT: All right, you have made the record. The Government has rested.

MR. CLAREY: If I may make one point.

As far as the spread shown by Agent Baker, there is no way, whether Agent Baker was there or not --

THE COURT: I am confused on it --

(At this point the Court addressed the jury:)

I am sorry, this is the very thing I said I would not do. Perhaps you would like to be excused?

3 No, it seems you prefer to stay in the courtroom.

(The sidebar discussion continued as follows:)

THE COURT: It is my impression that where the FBI had to show up and there was no identification with Baker, no record was made. I am not sure that was true with respect to the New York Police Department. I thought this was a show-up by the New York City Police Department.

MR.BLOOM: It was at the precinct, I believe, but I believe Baker was there. He made a report that Mr. Clarey gave me.

THE COURT: This was really an FBI procedure but at the precinct, is that it?

MR. BLOOM: It was either the FBI or the FBI and the City together.

MR. CLAREY: Probably it was that.

THE COURT: Then I am sure on the representation of the Government, and I asked him to check and find out to make sure there was no report that occurred, nothing can be produced. You can argue that that does not help you.

MR. BLOOM: That is right.

THE COURT: Because you still cannot cross-examine. I say the prejudice is minimal.

MR. BLOOM: Their practice of not keeping a

record of the photos shown should not put my position where his rights were prejudiced.

THE COURT: I now understand the argument for the first time. I can understand perfectly. I do not agree with you but I can see where you can make a valid argument.

MR. BLOOM: That is the argument I make.

THE COURT: He says you have no right to use procedures that limits the right of cross-examination and violates his right of process. I find there is no violation but I should hope the FBI would do things entirely differently in many respects, but I cannot set out the procedures for them.

MR. CLAREY: We are not in a position to change procedures.

THE COURT: Are you ready to make your motions?

MR. BLOOM: Have you rested?

MR. CLAREY: I have rested.

MR. BLOOM: Defendant moves for judgment of acquittal.

THE COURT: Motion denied.

(Whereupon, the sidebar was concluded.)

THE COURT: Are you ready now to proceed, Mr.Bloom?

MR.BLOOM: The defendant rests, your Honor.

THE COURT: Jury may be excused.

(The jury left the courtroom.)

THE COURT: I received no written requests to charge.

MR. CLAREY: I have written requests, it has just come from my secretary.

THE COURT: Do you have any requests to charge?

MR. BLOOM: I have none in writing, your Honor. I will ask if your Honor intends to give the jury an accomplice charge.

THE COURT: Yes, of course.

MR. BLOOM: I am wondering, your Honor, if it is feasible at all, as it is one of the more important aspects of this case, if your Honor perhaps from another such charge you have given can have me review it in advance so I can make a request or exception in advance.

THE COURT: Well, if you would like to know what the usual charge is, I would say it is the usual bank robbery charge. I charge on presumption of innocence, the burden of proof, what the evidence is, credibility of witnesses and the jurors' obligation to weigh it, accomplice testimony, impeaching evidence of a felony, inconsistent statements and the essential elements of the crime.

(At 3:10 o'clock p.m. the following occurred in open Court.)

THE COURT: Seat the jury.

(The jury took its place in the jury box.)

MR. BLOOM: YourHonor;

Ladies and gentlemen of the jury:

Mr. Boyd, Mr. Clarey, Mr. McCartin:

This is the last chance I will have to address you. After I get finished, which is possibly in about 45 minutes, maybe an hour the most, Mr. Clarey will then have his opportunity to address you, and as much as I may wish I will not be able to get up and respond to the arguments he makes.

My summation is not, as I am sure Judge Mishler will tell you or has already told you, is not evidence: What I say is not evidence and what Mr. Clarey says is not evidence, it is an interpretation that each of us may put on the evidence as it has been presented and are suggestions to you as to what reasonable inferences are to be drawn from what you have heard here.

There is one very very simple question here and it all boils down to one question:

Can you believe Avon White beyond a reasonable doubt that Fred Hilton was involved in this bank

robbery.

To put it another way:

Can you be certain beyond a reasonable doubt thatAvon White is telling you the truth.

That is the question.

If you think he may be tellingthe truth, it is not enough, you must find Mr. Hilton not guilty.

If you are not sure, if you don't know, you must find Mr. Hilton not guilty.

That is what American justice is about. Before a person can be convicted of a crime, you must know beyond a reasonable doubt that the credible evidence connecting him to the crime is just that, credible. In fact the law is that all the evidence has to be weighed and believed beyond a reasonable doubt.

The reason I focus on Avon White is because when you think about it and analyze it and scrutinize it then it is only Avon White who puts Mr. Hilton into this bank robbery. He is the only one, and I will go over that, we will go over each witness, and we'll see what each witness says.

I should point out now that of course you have no evidence, Mr. Hilton neither testified nor offered any witnesses in his own behalf, and as Judge Mishler

has told you at the beginning during the jury selection, and I know he will tell you during his Charge to you tomorrow morning, a defendant in a criminal case, and this case is included, has no duty to prove anything to you in any way.

I say we know that has been true since the beginning days of this country, that is since people in Salem, Massachusetts, had to prove they were not witches in order to avoid execution. But it doesn't happen in this country, or at least theoretically it doesn't happen in this country any more, and you, the jury, are here to see that it does not happen.

It is different in other countries but in this country, nobody, nobody, whether it be Fred Hilton or Richard Nixon, is called upon to prove his innocence in a criminal court, and that is where criminal courts differ from news reports, from what you put in newspapers or what you feel or think or expect. This is a very special place, this Courtroom, and there are some very special rules, and the Judge is here to enforce the rules, we are all here for a particular reason and therules were set down by the framers of the constitution as being very important.

Mr. Hilton, you will hear from the Judge, is

presumed to be innocent. Well, the whole psychology of the Courtroom really points the other way: My man sitting there, his attorney is with him, the witnesses come on, the government presents its evidence, the Judge happens to be employed by the government, the whole apparatus is set up to try one person or how many defendants there happen to be, the psychology is that he wouldn't be here unless there was something to this charge. Now that makes your job very difficult because the psychology and the law and the philosophy is quite different:

He is innocent, he is presumed to be innocent and you must, I urge you, keep that in mind, and that the witnesses, and particularly Avon White, if you must believe him then you must know that you must believe him beyond a reasonable doubt in order to find Mr. Hilton guilty of this crime.

Let me get to the facts:

There is no question, of course, that there was a bank robbery on April 10th on Northern Boulevard of the Jackson Heights Savings and Loan Association;

Further, we know that two people went in and thatprobably there were three people who went in.

Now, what do we know from other witnesses,

other than Avon White:

We know there weren't any masks, at least on one person, and surely, surely no mask, and probably there was no mask on the other, a woman saw there was no mask;

We know that there were two shots which went off and those shots did not go off while someone was climbing over the counter;

Further, we know that two people climbed over the counter and took some money:

Those are the things we can believe beyond any doubt.

We can believe from Mr. Weber's testimony that four people fled in a car;

We can believe that there was a flat tire, that at least the car was left at a diner and we know it was found by O_fficer Sullivan and others and it had a flat tire.

Now there is no question but that Fred Hilton and Avon White together took a car from Professor Edgar on the day before: There is no question about that. Thatdoes not make Mr. Hilton the bank robber. Mr. Hilton is not here accused of robbing the car, stealing the car from Mr. Edgar; if that is to be

dealt with it will have to be dealt with another way in another case in another Court: That is not for your consideration.

The government, Mr. Clarey, may urge upon you that it is part of a conspiracy, the conspiracy count, and indeed it is suggested that Mr. Hilton took part in the bank robbery the following day.

Once again, in order to believe that, you have to believe Avon White beyond a reasonable doubt. He is the only one who puts Fred Hilton in this case.

The witnesses, the two women from the bank, they don't mention Fred Hilton.

Mr. Weber, although he was shown photographs, and he was shown a photograph of Fred Hilton the day of the bank robbery -- Mr. Weber, you may recall, is the gentleman who lives across the street from the bank -- and granted, as he tells us, that he really didn't get a real good view although he looked at the license plate, and reason will tell you that he looked into the car, not necessarily to pick out faces but he looked to see what was happening, he was observing, he was intelligent enough to pick up the license plate number because he thought there was something fishy, and he was right, Avon White and some other people had robbed the bank.

Professor Edgar has not put Fred Hilton in the bank robbery, Professor Edgar should certainly convince you behond a reasonable doubt, beyond any doubt that Fred Hilton and Avon White took his car, or at least Fred Hilton took the car. There is no testimony from Professor Edgar about Avon White, as I recall.

I should say that when I speak I give you what is my best recollection of the evidence. It is your best recollection that counts. If there ever comes a time when you are uncertain during your deliberations, which will begin after the Judge charges you tomorrow, you can always ask to have the testimony read back or any of the exhibits brought before you in the jury room. So don't trust my recollection, don't trust Mr. Clarey's recollection, trust your own collective recollection of what the testimony was.

There was testimony about Officer Sullivan, an FBI Agent or employee, Mr. Lodge, about fingerprints of Meyers, proof of course that Twymon Meyers was in that car at some point.

Mr. McCartin testified, he testified that these pictures, Exhibits 26 and 27, were those of Phyllis Pollard.

And Detective Otis Thompson, when he arrested Mr. Hilton, he had a gun, and he testified,you might recall, that he had this gun under a coat with about an inch of it sticking out with a couple of policemen running past him.

There is no question but that Mr. Hilton had the gun on the day he was arrested in June. But it is just not, in listening to Detective Thompson's testimony, it is just not reasonable with the patrolmen running by that he was going to carry a gun and have it stick out that way. What would be the sense of it, why would he do it unless he wanted to create an impression that there was great danger, and I am talking about Detective Thompson and the police, particularly that there was great danger so that somehow he would be rewarded or get some departmental award because he was arresting a man with a gun out.

But it is not really terribly important to the case whether the gun was out or in the briefcase or in his pocket or under a coat.

This just gives you the tenor of what law enforcement people are prone to do and say when it suits their interests.

Let us talk about Avon White, let us talk about

several things, we will talk about how you test credibility:

I am going to talk about how his testimony here in this trial, how it makes no sense just standing by itself, and I am going to talk about something Mr. Clarey mentioned in his opening statement and which he may very well and very likely will mention in his summation to you, and that is that this is all corroborated. Well, I'm going to very carefully go into what is corroboration and what is not corroboration because I think it is important to you.

How do you test Avon White's credibility?

Let us first talk about what his testimony is. He says that Fred Hilton and Melvin Kearney -- and I will get to Melvin Kearney in a little while -- Phyllis Pollard and Twymon Meyers, five people, planned the bank robbery. He says that the day before the bank robbery, he, with Fred Hilton, stole a car, and he says that on the day of the bank robbery four people, not including Melvin Kearney, went to the bank, Fred Hilton being the driver, and that Fred Hilton drove them away from the bank after the robbery and they divided up the money and Melvin Kearney's job was to sit and listen to the radio and see if any arrests

were made. Now, I don't know why Melvin Kearney was supposed to be doing, if anything, in what may be called the complaint before you, apparently he was supposed to get the wine and reefers and for that he was to get the same share as everybody else.

Now, this is essentially Avon White's testimony.

Well, one way you test somebody's credibility is you look at what kind of a person he is. You saw him testify. Whatever his problems are now he has been using valium, and presumably he is incarcerated, he has been getting valium from the Government, and I don't know what brought that about. That is something for you to consider.

Avon White, what kind of a person is he? What has been his past criminal activity, what has he done, that is at the age of 23, which suggests that you should believe him beyond a reasonable doubt, and you have to be certain beyond a reasonable doubt that he is telling you the truth?

What has he done?

Well, he beat up a police officer, he went to jail a couple of years ago, he was 16, 17 at the time.

He had a gun in North Carolina, he went to jail for six months, and he admitted, he has admitted

nine different very serious crimes, and I am going to tell you about that, he has admitted to four bank robberies, including this one. In one of the bank robberies he hit an old man over the head with a gun.

There were four bank robberies, and let us start with that, that this is the kind of man Avon White is.

There are two attempted murders, two separate incidents of attempted murder of New YOrk City police officers in the Bronx County.

That is the man they want you to believe.

Mr.Clarey was careful to tell you in advance that he does not expect you to like him, Avon White, and Avon White, well, it doesn't matter to any of us except maybe Avon White himself whther you like him or not.

It is a very simple question: Can you believe him beyond a reasonable doubt?

He has an attempted murder case in Queens County, he has an armed robbery in Queens County, he has an armed robbery in Brooklyn, in Kings County, so that is nine separate crimes.

As to the one of those in the Bronx, the attempte

murder of a police officer, he said he didn't do it, he was just there, other people were shooting, but he pleaded guilty anyway to a crime where he can be punished by eight and a third to 25 years in jail.

He wants you to believe he didn't do it but he pleaded guilty anyway.

The second test of credibility is what obviously is a person's motive to lie. What we are talking about here is that upon the 17th of September when he was arrested, that for whatever his reasons were he decided to help himself, and the best way he could help himself was to name people that they asked him about, to solve crimes for the FBI. As of the 17th of September 1973, this bank robbery was unsolved. So they asked him about it, the FBI asked him about it. He had already given them, as you have learned, he had already given them the name of Melvin Kearney in another bank robbery, so he gave them another friend because he might help himself, he gave them Fred Hilton's name, and once he did that he was forever stuck with that; no matter what he did, no matter how he wanted to tell the truth about this bank robbery, he was in trouble because he had given Fred Hilton's name.

So with that hanging over his head, let us see what happened to him:

He has nine cases open, and do you know how much time he could get for those nine cases? Each of the bank robberies he could get 25 years; for each of the robberies, the other two robberies, he can get 25 years; for the attempted murder, he could get 25 years, and for the two attempted murders of police officers he could only get life sentences for that.

We are talking about a man who faces 175 years plus two life sentences possibly if he doesn't cooperate.

That is Avon White.

Do you think that that is enough motive? Do you think it would be difficult for you to tell the truth if you wanted to save yourself from that?

And what has he done? Let us understand what his lie is. He has told the truth more or less about his role in the bank robbery; he has told more or less what happened except for one thing, one thing that is totally unverifiable: He just changed the name, he just changed it from one person as the driver to Fred Hilton.

That is all that matters in this case.

If it were somebody else in that car, if it wouldn't be Fred Hilton, if Fred Hilton wouldn't be here, if he said that, if he said it was John Smith, then John Smith would be sitting there. If he said it were I, it would be I, if he said it were you, you would be there.

So Avon White has these 175 years plus two life sentences hanging over his head and as opposed to that he is now pleading guilty to one crime, one bank robbery, the 20-year count. They are going to dismiss the 25-year counts and the 25-year counts, and he has pleaded guilty to something in the Bronx known as a Class B, as in boy, felony, which does not carry a mandatory minimum sentence, so he can get probation or he can get time served or he can get concurrent time with whatever federal sentence. You heard him, he is going to get a federal sentence and it will be recommended that he get concurrent time, it is going to be recommended that he do it in a federal jail, this concurrent crime, and it is quite possible the federal judge can sentence him under what is known as the Youth Corrections Act which would carry a possible six-year sentence and involving no more than four years in jail.

He knows both of those things, and if he says the word, the magic word "Fred Hilton," he gets one treatment, if he says something else, he gets another treatment.

Law enforcement has been helpful so far, a little bit, they have released his girlfriend Eleanor Brown from jail, and this was on the very same day that he pleaded guilty up in the Bronx, by coincidence, and so far as he knows there was no discussion of that, and he tells us that and do you believe that there was no discussion of that?

(Continued on next page.)

It may very well be said: Well, that was a little lie about -- well, a little lie; it was just about himself, it is just a little lie. But what kind of a person are we talking about. Here is a man under oath testifying as to a man here on trial. Avon White is telling you little lies and yet you must understand in terms of the number of words and the complexity of the lie that he would convict Fred Hilton and that all he has to do is to say Fred Hilton instead of Melvin Kearney, that is all he has to do, just to substitute that name, one name for another, for if it is not Melvin Kearney, maybe it is somebody else. Just very simply, two words. He doesn't have to change anything else, but we will see he did change some things to protect himself, things that other witnesses told you were inconsistent with what he told you, and I will get to that in a little while.

Anyway, on one hand Avon White has all these cases pending and if he doesn't cooperate, well, you understand, they are not then going to dismiss these other three robberies, they can prosecute them because he has broken his part of the deal, so they don't have to keep their part of the deal. They can prosecute the other attempted murder cases of the police officers,

they can prosecute in the Queens case, the attempted murder, they can prosecute the Queens case robbery, they can prosecute the Brooklyn case robbery, and they don't have to drop the 25-year counts on the federal case that he pleaded guilty to.

Now they have kept him in jail in slightly better condition than the average prisoner, so they have shown, the Government has shown its good faith. He is here, he has reason to believe they are going to follow through on the deal that they made.

What is the hallmark of that? Do you understand that he pleaded guilty to these two crimes, the bank robbery in the Federal Court in Manhattan and the attempted murder up in the Bronx, he pleaded guilty in the month of October and November, so we are talking about eight, nine months ago, and he hasn't been sentenced yet and he doesn't feel that he is over his head, he doesn't feel it is hanging over his head, it doesn't mean anything to him.

Doesn't it occur to them that, gee, he would really like to be sentenced now so that he knows what is going to happen to him and he can do anything he wants, he can tell the truth, that that doesn't matter to him, he would have you believe.

Ask yourselves, think of yourselves or somebody you might know. You have literally the rest of your life in jail just for saying, "Fred Hilton," or you can clear your whole life just by saying, "Fred Hilton."

When he said those words, "Fred Hilton," on the 17th of September, when he was arrested, he knew what they could accuse him of,he knew about these nine crimes and he knew it was time to get himself together. He knew it was time to give them something, something which he hadn't already given them, so he gave them the name Fred Hilton.

How else can you tell whether Avon White is telling the truth?

Well, look at his past life as it applies to his crimes, his use of aliases all his life.

He tells us he didn't lie about his name, he just used a different name.

Is that the kind of person you want to believe?

Who can play with words like that, who can play with you and play with your understanding of the truth? No, no, no, I wasn't lying, it is a different name, I'm sorry, I didn't lie about my name, it is just a different name.

He gave a false name to stay out of jail.

That is what all these aliases were about and why, and that is what he told us, why he was doing it, he was giving these false names to stay out of jail. It is not his name, he is giving somebody else's name, but that is not the truth.

What else had Avon White done in his life to indicate to you that he is not a person capable of belief, and I repeat, you don't have to say to yourselves that the man is lying, all you have to say to yourselves is: I can't be sure beyond a reasonable doubt he is telling me the truth.

You might discuss it in the jury room and somebody will say, well, how do we know he is not telling the truth? The point is, you don't know, you can't possibly know with Avon White whether he is telling the truth or what he is doing. He is trying to buy himself some freedom, you can't know.

Well, either back in 1968 and '69, either he completely fooled Dr. Frederick, Dr. Ofner, Dr. Weiss, Dr. Greenberg, Judge O'Brien, the doctors at the Matteawan State Hospital, either he fooled them into saying that, "In my opinion, this young man is mentally ill, he should be transferred to Matteawan State

Hospital for further care and treatment,"that he is psychotic, that he is paranoiac, either he fooled them or he is a sick young man.

I don't know what Mr. Clarey is going to make of the item in the evidence, "recovered from psychotic episode."

Does that mean that he is a healthy person?

Does that mean that he is a person who has an understanding of what he is doing to Mr. Hilton?

Why is he using valium now? Is he a healthy person? Three dimes a day is a lot of valium.

What Mr. White did, what Mr. White did is he ran a little game on the doctors, and that is what he tells you, he ran a little game on them.

I don't know what kind of a game it is, you will have to decide.

"I came to see you, Doctor, you didn't do your job, you are trying to disinclude me. You can't do nothing for me. If you don't do your duty your life must be taken and I am a giver and taker of life. I have been watching you, I am the All-Seeing. I am the Overlord and Saver of the World. I am the Almighty God, Allah, the Supreme Being. I have always been the Savior of the World, I will always be here.

I will never die. All my children talk to me and I see them. I see everything. You can't hide anything from me, I rule the Earth. I made rain last night, I am God, I have got power to do anything I want to do, build or destroy, a giver or taker of life."

That is the man you are supposed to believe and to convict a man of a serious crime.

What other lies has he told? Little lies? He told the other attorney in the trial a couple of weeks ago, "No, I didn't do any time, I did do six months in North Carolina."

Then he played with words, words, "I didn't do six months in Newton in North Carolina, I did it in Ashville, North Carolina, he tells us, and he wants to believe he never discussed with his attorney in Bronx County, with that attorney present, and he pleaded guilty, he never discussed that he could get a possible life sentence for the attempted murder of a police officer. He wanted you to believe, he said, I want you to believe that he never discussed it with me, that he could get a plea to a B felony before he went into court, and it is not what he wants you to believe in this court. He wants you to believe and he wanted some other jury to believe that some two

or three weeks ago that he never discussed it.

You understand there was testimony that he concealed from me, somebody he asked to get an attorney for him, somebody he trusted to that extent, he concealed from me that he had told the FBI various things. He fooled his good friends Mr. Hayes and Mr. Kearney.

He wants you to believe that the New York City Correction Department permitted him and Mr. Hayes to switch around so that they would be in the same cell.

Don't you think the FBI has something to do with that?

We have heard that he testified against Mr. Hayes in the Bronx. Don't you think that that is how the switch was arranged?

Here is a man who made the statement and agreed to cooperate the day he was arrested and he winds up in the same cell with somebody who doesn't agree to cooperate, and that was because the inmates thought it would be O.K.

Here is a man who told the doctor he hears voices, "These are people talking clearly, but not to me," and this is the psychiatrist he is telling this to, and what he wants him to believe is that what he meant and what the doctor was asking him about was,

I am at one end of the room and they are speaking back there, they are talking, and I hear their voices clearly.

That is psychiatrically significant, and that is what he wants you to believe.

Does that make any sense to you?

What about making rain last night?

Well, here in this courtroom he tells you, "Well, that was just one of the parts of my program, it was a part of my little game I ran," but in another trial he said, "No, I meant 'wisdom,' I meant 'wisdom,' I made the wisdom last night."

Mr. White is facing 175 years plus two life sentences, and he tells you that what he is worried about, if he doesn't say the magic words, "Fred Hilton," is a perjury indictment, that is what he is worrying about, a perjury indictment.

He is not worried about his nine other cases that will put him in jail for his life, his great clean life, he is not concerned about that.

What about some of the reasonableness of some of his testimony here: 45 minutes it took him and the people who robbed the bank with him to get from the Bronx to the bank, not a word about the bank robbery.

I don't know why that is reasonable, he must have talked about the bank robbery. It is only in his mind, the reason why he would tell you that, that there was no conversation about the bank robbery .

What kind of a mind does he have to expect you to believe that?

One reason for the jury system is because 12 thoroughly deliberate and bring their own respective experiences and common sense to that jury room.

On the 17th of September when he was arrested, he gave a couple of lines about what happened at this bank robbery, and what does he do, he says this, that Twymon Meyers, myself and Margaret -- and he lied to the FBI about Margaret, there was no Margaret. The person who committed that bank robbery was Phyllis Pollard.

How easy it was for him to just say right there that, and this shows you that on September 17th he was thinking about something, and he said it was to protect Phyllis Pollard.

Phyllis Pollard is not his woman, Eleanor Brown is his woman.

He had a reason, for whatever his reason, it shows you that he was able to select what he would do,

what he would say to the FBI, he was able to select and just as he lied about one name, Margaret, I submit to you he lied about another name, and that name is Fred Hilton.

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Summation-Bloom

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Is it reasonable knowing Carney's job was to stay home and get some wine and marijuana and listen to the radio? Again, what was Melvin Carney supposedly to have done, assuming it was true? What was he supposed to have done if he heard on the radio there was a bank robbery and people were arrested and shot or whatever. Nobody was arrested and shot. Was he supposed to wait until he heard on the radio there was a bank robbery before he went out and got the wine? I don't understand. One can understand Mr. Clarey said in his opening statement Melvin Carney's job was to stay home and listen to the radio and at the trial Avon White adds to that he is supposed to get some wine and marijuana. I do not understand. It was Avon White's testimony that Melvin Carney shared in the proceeds of this.

I do not know if the indictment will be read to you. I am going to read the conspiracy count to you.

"On or about and between the first day of March 1973 and the 10th day of April 1973 both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant Freddie Hilton did combine, conspire and confederate

together with Avon White, Phyllis Pollard and Twymon Meyers, herein named as co-conspirators," and so on.

Where is Melvin Carney's name? Why is Melvin Carney not in the conspiracy count assuming everything Avon White says is true? Why is his name not in the conspiracy count? Maybe because they do not believe it is true. Maybe they do not believe that Melvin Carney or anybody was in on any planning. Maybe they do not know what to believe about Avon White.

I repeat we have already heard that Melvin Carney had a case in the Southern District of New York and that trial took place a couple of weeks ago. Maybe that is why Melvin Carney is not in there, we do not know. But if Avon White is telling us the truth why is his name not in there? Why is Carney's name not in there? Think about that. What possible reason is there to leave his name out if you believe Avon White?

Let us look at Avon White's testimony as it compares with the testimony of other people and you may say well, or Mr. Clarey may say, well, there are inconsistencies but it is not important. All we have, you understand, all we have is Avon White using the words Fred Hilton and everything rests on your believing Avon White.

What he said when they took the car from Professor Edgar, not only did Fred Hilton have one gun, he had two guns. Professor Edgar, of course, told you otherwise, that Fred Hilton, who was the driver of the car on the 9th of April, had no gun.

What is it -- that Avon White does not like Mr. Fred Hilton? Why would he say that about Fred Hilton when it is not true? It is a lie, let us not mince words. He lied about Fred Hilton having a gun on April 9. He said that they had their guns out, that is what Avon White said to you under oath, that they had their guns out.

Professor Edgar was, to the best of his ability, telling the truth, the absolute and complete truth. He has no motive to lie to you here. Why would the professor not say he saw a gun if he saw one? Because there was no gun. He is telling what he remembers. But Avon White, so you would convict Fred Hilton, and he would get the break that he so desperately needs, throws a little gun in the game on April 9.

Mr. Weber testified that he observed essentially the getaway. I asked him specifically what about a garbage truck -- nc garbage truck. Avon White said, "Well, we had trouble getting away because there was

a garbage truck in the way." He lied to you again.

A very significant lie -- what about the two women who were bank employees? How important are the contradictions there? No gloves. I asked about it and how important it was because of the whole fingerprint thing in the car and the reason and the only reason is that only Twymon Meyers fingerprints appeared in the car because everybody else had gloves. That was the theory. Whether Avon White worked that out himself or with the assistance of Mr. McCarthy or any other FBI agent, but that was their theory. We only have Twymon Meyers' fingerprints when the person really involved in the car was Fred Hilton. Well, let us put some gloves on Fred Hilton while we are at it and let us put gloves on everybody except Twymon Meyers.

What is the rationale, by the way? Why wouldn't Twymon Meyers also wear gloves? Is there any particular reason he would not wear gloves?

The assistant manager of the bank saw no gloves and she did not remember that at first. When I showed her her prior statement to the FBI she believed she remembered she did not see any gloves.

Neither of the two women from the bank saw any

masks and we know that because they were able to give descriptions of what were on the faces, specifically glasses, big eyes, large nose kind of hooked, short hair, possible moustache and hat. We do not see those things or any of those things with a mask. Avon White made a big fuss about the masks. But what was that fuss? That fuss was a lie, he lied to you again.

The other bank employee, she also saw tinted sunglasses of one of the individuals, no mask. No one wears sunglasses over a mask -- pull your hat down and put sunglasses on, that doesn't make sense. Maybe on Halloween it makes sense but this was in April.

The witnesses at the bank tell you that two shots were fired by two separate people. One of the witnesses is sure they were fired by two separate people and who were, according to Avon White, who were those two separate people? Let us get to that first.

Avon White jumped over toward the rear of the bank according to him and Phyllis Pollard toward the front of the bank according to him. Each person fired a weapon close in time but each person fired a weapon, clearly two shots.

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Well, Avon White does not want Judge Gagliardi sentencing him and Judge Dollinger who is going to sentence him to think he is the kind of person to fire a gun in a bank to intimidate people. So what does he do to help himself? He tells you a lie and he told them the lie and he will tell the lie as long as he lives. But the problem is other people, the woman there who have no motive to lie, tell you there were two shots and the man who jumped over the rear part of the counter he fired one of the shots. Okay. That does not say whether Fred Hilton was there or not there but again it is the person you have to believe beyond a reasonable doubt and he tells you one thing and other witnesses who have no motive to lie, tell you another thing. That is the only way you can test credibility.

In addition, the woman from the bank testified that the shots clearly were fired before anyone jumped over the counter.

Avon White testifies while Phyllis Pollard jumped over the counter the gun went off accidentally. We do not know why he lied about that but he lied. He may not know the truth from a lie.

He gave a statement on the 17th, the date he was arrested, the 17th of September, totally devoid

of details. The agent said he said, "We robbed the bank and took the car the day before" and that was his entire statement. He told us the FBI interviewed him again and he gave the story in greater detail. Where is that? Where is that statement? I wonder what those details were. I wonder if the name Fred Hilton was in there. I wonder what he said about Fred Hilton and if his name was in there. I wonder if he gave the name Phyllis Pollard. But we do not have the benefit of that, you do not have the benefit of that.

On September 17th just as yesterday Avon White is trying desperately to help himself get out of a totally impossible situation.

What about what he said in the Grand Jury? He was asked if four people planned the bank robbery and he answered yes. Well he told us here on the witness stand five people planned the bank robbery, that Melvin Kearney, who is not in the conspiracy count, five minus one, it was four.

Mr. Clarey may tell you everything is corroborated. Professor Edgar's testimony corroborates the car. The bank witnesses and Mr. Weber and the fingerprint people they corroborate the rest of the story. Well,

of course, a good part of it is going to be corroborated. Avon White stuck up a bank and he fired a shot in the bank. He knew what happened, but the one thing he made up is not corroborated, that Fred Hilton on the 10th day of April, 1973 drove the car, that is not corroborated.

Mr. Weber, and I wish he could make an identification of the driver of that car, was unable to do so. He did not look at the license plates until afterwards. It was estimated he did look on that very day a couple of hours later, that he did look at photographs and among others of Fred Hilton but he did not pick out Fred Hilton. It is unfortunate he did not pick out the driver because Fred Hilton was not there and he would not be here today.

When Mr. Clarey talks to you about corroboration of course it corroborates Avon White committed these crimes. He took the car from Mr. Edgar and he robbed the bank, of course he is going to corroborate, he was there. He did not read about it in a book. It was one of four bank robberies he committed in a short period of time. That is the important test, whether they corroborated, the mask business, the gloves business, the naming of Margaret, a lie, a deliberate

lie to the FBI. In fact he never mentioned Melvin Kearney at any time in the Grand Jury, never made any effort to say, "Excuse me Mr. Clarey, there were five people involved in this plan and the fifth person was Melvin Kearney.

What if a friend or relative of yours stood to be convicted of any of the testimony like that of Avon White? Would you be upset? What would you think of it? What would you think of our system if Avon White could convict anybody for a parking ticket?

You have all told the jury that you can treat Mr. Hilton fairly, that you can be objective and follow the Judge's instruction about presumption of innocence, about the burden of proof being on the Government and that burden of proof being beyond a reasonable doubt.

No matter how you twist it Avon White is this case. All the padding doesn't change it. Avon White says it is Fred Hilton and nobody does and nothing else does.

Again, and I am almost finished, the question comes down to can you be sure beyond a reasonable doubt that this person, Allah, the Son of God, is telling you the truth. Can you be sure of that beyond

a reasonable doubt?

Please remember that if you say not guilty nobody loses. The Government, the People of the United States of America do not lose, we all win when justice is done. It may be expensive to have brought this prosecution and it may be cumbersome. You are here to do justice, you are here to decide, you are here really to test, to try not so much Fred Hilton, you are really here to try the Government evidence, to test the Government evidence, to decide for yourselves whether you can believe it beyond a reasonable doubt. That is what a trial is, a search for the truth if you can know the truth. If you are not sure beyond a reasonable doubt you cannot convict, you must acquit.

I want to remind you that if Mr. Hilton is to be in any way punished for taking Mr. Edgar's car, that is not for you, that is for some other people, some other time, some other place. That is not what he is here accused of and I ask you to keep that in mind at all times.

I do not know what else to say to you. This is a one witness case. The witness could not be less reliable, could not have more motivation to lie, could

not have more motivation to be rewarded. If our criminal justice system and criminal justice means anything you must find this man not guilty.

Thank you.

THE COURT: We will take a short recess and we will then hear the summation by Government.

(Whereupon a recess was taken.)

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(At 4:15 o'clock p.m. the trial proceeded as follows:)

THE COURT: How long do you expect to be, Mr. Clarey?

MR. CLAREY: About 40 minutes, perhaps less.

THE COURT: Then my estimate of about 5:00 o'clock will be about right. They will be ready for the bus then.

Did you get that, Mr. Julian?

Bring the jury in.

(Jury took its place in the jury box.)

THE COURT: All right, Mr. Clarey.

SUMMATION BY MR. CLAREY:

MR. CLAREY: Your Honor, Judge Mishler; Mr. Bloom;

Mr. Foreman, ladies and gentlemen of the jury:

For the past two days you have heard what I consider a great deal of evidence, you have seen a rather large number of exhibits for a short trial.

Mr. Bloom in his eloquent summation would have you believe that everything you do, that everything in this entire case rests on Avon White, on the fact that he spent several months in Matteawan State Hospital when he was 16 years old, on the fact that he has a very extensive criminal record, and on the fact

that he had a deal from various prosecutorial authorities. I am going to come back and discuss each of those points at the end of my summation, but right now I'm going to lay Avon White aside for a few minutes and discuss the other evidence in the case.

What do we know without any question and what do we know from what you have heard in this courtroom during the last two days:

You know without question and Mr. Bloom conceded most of these points, you know without question that at 11:00 a.m. on April 10th, 1973, at the Jackson Heights Savings and Loan Association on Northern Boulevard at 89th Street, Queens, that that bank was robbed of $5,887.46.

We know that from the testimony of two eye witnesses and we know it from the black and white figures on these proof sheets, which are in evidence -- which are not here, they are upstairs being copied.

We know that that bank was robbed by three young blacks, one eye witness had it at two but we know that she was incorrect because of two things;

Mr. Weber saw three young blacks turning the corner heading for the bank, he saw three come out a few minutes later, not come out, but come right around

the corner, he couldn't see the doorway, he saw three men get in a car and it was driven by a fourth.

Mrs. Guttilla while lying on the floor saw the features of the third bank robber who Mrs. Grivas could not see from her position on the floor kneeling behind the teller's cage.

Now we know there had to be a fourth because there was a getaway car and there was a getaway driver.

The question, as Mr. Bloom pointed out for us is who was the driver of that getaway car.

What do we know about that getaway car?

We know positively and unequivocally that not 21 hours before that bank was robbed Freddie Hilton stole that getaway car and kidnapped its owner, Professor Edgar.

Now, what possible purpose, again laying aside for the moment Avon White's testimony, what possible purpose could Freddie Hilton have had in stealing that getaway car with another person, another heavier, taller person?

Did he steal that car, the two of those people, did they steal this car at gunpoint to take a little joy ride?

Did they take a six year old, four door Chevrolet

to impress their friends?

Did they risk an armed robbery and a kidnapping charge to get a car for their personal use?

In order to commit a bank robbery they had to take a car at gunpoint because they had to have keys. Have I pointed out in my opening statement, they couldn't rely on crossing wires of a car and take a chance that the car would stall during a bank robbery.

Now, assuming, and this is conceded by Mr. Bloom, that Fred Hilton stole that car from Professor Edgar on April 9th, 1973, then ask yourselves why, by any stretch of any reasonable imagination, why would Freddie Hilton steal that car and completely -- for no possible reason --- and completely turn it over to somebody else for use the following day, completely turn it over to Mr. Bloom's mystery man for use the following day, and without any idea that a bank robbery would be committed by the use of that car the following day?

The only logical conclusion, based on all of the evidence you have heard, and again laying aside the testimony of Avon White for a moment, is that Freddie Hilton stole that car at gun point on April 9th with one specific intention in mind:

The intention that it be used as a getaway car in a bank robbery the following day -- and, by God, it was used as a getaway car in the bank robbery the following day.

I submit to you that based upon that evidence, based, and excluding Avon White's testimony, completely, based upon that evidence alone, that you can conclude that that car was taken at gunpoint for the express purpose of using it in a bank robbery the following day, and on that evidence alone you may convict the one who took that car, Fred Hilton, of armed bank robbery, of aiding and abetting, and you will be so instructed.

You may also consider that not seven weeks subsequent to the bank robbery Freddie Hilton was arrested with this gun (indicating) in his possession, and I don't care whether the gun was in a briefcase or hidden under a jacket, there is no question but that it was in his possession, and you are entitled to conclude and consider what type of person carries around a thing like this (indicating).

MR. BLOOM: I object to that, your Honor.

THE COURT: May I have that read back to me.

(The reporter repeated the last two sentences.)

THE COURT: Now strike that.

You know, Mr. Clarey -- disregard it, I think the statement is inappropriate, that is not in issue, the type of person before you.

The only question before you is whether the Government has proved beyond a reasonable doubt that this defendant committed the bank robbery or aided and abetted in the bank robbery, and the only reason that evidence was permitted before was to corroborate, if you believe, the testimony of Avon White.

MR. CLAREY: I'm sorry, your Honor, I misunderstood earlier ruling.

(Mr. Clarey addressing the jury.)

Now let us turn to the testimony of Avon White.

Mr. Bloom would have you reject completely Avon White's testimony in this case for four reasons:

One, he has a long criminal record;

Two, he has been given a so-called great deal by the prosecutorial authorities;

Three, that when he was 16 years old he spent time in Matteawan State Hospital either because, one, he fooled the pyschiatrist by faking insanity to get in there and to get out of a tougher prison;

Or, two, because he was actually sick;

And, four, we should reject Avon White's

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testimony because there are inconsistencies between his testimony and the testimony of eye witnesses to the bank robbery.

Now, taking the last point first:

I can only say that thank God for those inconsistencies. All of us know that if ten people witness an event you are going to get ten different versions of that event, especially concerning minor details.

(Continued on next page)

The versions of the events must vary widely if witnesses are attempting to retell exactly what they thought they saw happen. If I were you I would strongly suspect any trial or any recounting of facts at which every witness testifies exactly alike as to every minor detail because if they do there is something fishy. That type of thing doesn't happen in real life.

Now, the inconsistencies pointed up, some mentioned and some not mentioned that I will point out, was was one shot fired or two? Well, it really doesn't make any difference whether it was one shot or two which were fired, whether two shots were fired immediately after one another or whether there were two separate, or whether two separate people fired the shots.

But I will submit to you that Mrs. Grivas couldn't possibly know that those shots were fired by two separate guns because, and you heard her testimony and it is your recollection that counts and not mine, but you heard her testimony that she heard the shots, she didn't see them fired. Mrs. Guttilla tells us, her testimony is the same.

Now, Avon White, as to that event, is merely a

witness. He has been involved in several bank robberies, he was involved in one other in which Phyllis Pollard's gun went off as she crossed over the counter.

Now that is the type of a detail that can become confused in an honest recounting of the facts by various witnesses.

Were there two robbers or three?

Now my purpose in calling Mrs. Guttilla was to demonstrate what I mean when I say that several witnesses can come up with different, honestly different versions of minor points.

Clearly there were three bank robbers, Mrs. Guttilla saw the feet of the third robber, Mr. Weber saw the three go in and go around the corner and the three come back. Mrs. Grivas would have sworn to that testimony, that there were two, because she saw only two, and perhaps she didn't stop to think there had to be a third to cover the people who were not behind the teller's counter, the people who couldn't be covered by the two robbers who were filling their bags from the drawers.

There is even a discrepancy as to whether there were three men in the bank or two men and one woman,

and Avon White says that Phyllis Pollard was in that bank.

Take a look at these two photographs of Phyllis Pollard (indicating), whe is not a feminine looking woman, she could easily be mistaken for a man.

Let us take a look, we have a lot of inconsistencies, but let us take a look at the consistencies, the little threads of testimony from witnesses, from one witness which we weave together and mesh together with the little threads of testimony from another witness, and that although these witnesses differ on several factors these threads mesh together to unequivocally attest to the truthfulness by all of those witnesses.

Now Avon White said that three men were wearing gloves and one was not, and in all deference to Mr. Bloom I think he misinterpreted the evidence of the fingerprint experts. Detective Sullivan testified that on April 20th he went over that car with a fine tooth comb, inside and out, he dusted every inch, every window, the seats, the doors, the handles, the steering wheel, and he found one set of prints on the passenger side of the front seat, and whose prints

were they:

Twymon Myers prints.

Where did Avon White say Twymon Myers was riding?

And who did Avon White say was the only man without gloves?

It meshes together.

Now Mr. Bloom couldn't figure out why Twymon Myers would go into a bank without gloves and the others would wear gloves.

Well, Freddie Hilton would wear gloves because he was driving the car, he was touching the steering wheel and he had to touch surfaces in that car.

Phyllis Pollard and Avon White were wearing gloves because they were going into a bank, going to jump over a counter, going to open drawers, they were going to put their hands all over that bank, they needed gloves.

But what was Twymon Myers' job in that bank, to stand there with his own gun and keep everybody covered. He didn't have to touch a thing, he didn't need gloves and he didn't have gloves on. Perhaps it was a warm sort of Spring day and gloves would have been a hinderance to him, he didn't need them and he didn't wear them.

Another example of the threads of the testimony which run together:

Avon White testified that three, he, Pollard and Myers were dropped off at a block north of the bank, at 32nd Avenue or 33rd Road, I can never get those streets straight, and 89th, and that they walked a block down.

Now there was some confusion about the garbage truck and my recollection of what the testimony is is -- and it is yours that counts here, but mine is that the garbage truck held him up just after he dropped them off at 32nd Avenue and 89th Street, and White said:

We saw the garbage truck because as we got out of the car it was apparently going east on 32nd Avenue, ahead of where Fred Hilton would have had to go over to 32nd, south on the block beyond 89th, which is apparently a one-way, and then south and back across Northern Boulevard to turn the corner and to wait alongside the bank, and that it was the garbage truck that held them up, and that it was this garbage truck which made it difficult for the car to get there by the corner of 89th and Northern Boulevard, it was way back on 32nd Avenue.

These are the little unforeseeable facts which can mesh together, and that is why these three people were seen walking south on 89th Street, and Avon White said he dropped us off a block north and we had to walk south on that side of 89th Street.

Now Mr. Weber didn't see the car, all he saw was these people walking, the car wasn't there, the car had to get stuck because of the garbage truck, and it had to be driven around a block, and it took five minutes, and the car didn't pull up until the three were coming out of the bank, and then he saw the car, Mr. Weber, and he saw it then because that was the first time it was there.

(Continued on next page)

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Professor Edgar:

In his testimony, which Mr. Bloom very congenially conceded is unimpeachable, and it is absolutely true, it is unimpeachable, he talked about the heavier of the two robbers sitting in the back pretending he was a junkie. The drugs are out there, we have got to get them. They took his wallet.

Avon White testified to both of those minor facts and they meshed together very nicely.

Now, as to Avon White, you remember he was asked whether Freddie had his gun out or didn't, and my recollection of Avon White's testimony is that, I walked first and I first had my gun out on the Professor. Now I believe he did say that Hilton had his gun.

Now why would he possibly lie about a situation like that? He probably wasn't in a position to see Hilton, he may have assumed he had his gun out. But his testimony concerning the conversation in the car meshes beautifully with Professor Edgar's recollection of that confession.

Let us talk a little bit about Mr. White's presence and demeanor on the stand in this courtroom:

You will note that on cross-examination (sic)

Mr. Bloom spent about five or ten minutes on the facts of the case and at least an hour, possible an hour and a half or two hours, I don't precisely recall, on such things as the deal with the Government, and he repeated it at least four or five or six times. Also he talked about the psychiatric record, the conferences with the psychiatrist when White was 16 years old and the criminal record of Mr. White.

Now he would like you to focus on those things because by focusing on those things that draws your attention away from the facts of this case and draws your attention away from Freddie Hilton, his client.

He would like you to go into that deliberation room and you to discuss the psychiatric reports for hours.

Now first let us take a look at the great deal that Avon White has supposedly gotten:

He has pled guilty to two very serious charges, one in the Bronx County which exposes him to a maximum of 25 years and a minimum of eight and a third, and one in the Southern District -- that was the attempted murder of a policeman -- and the one in the Southern District for which he faces a 20 year bank robbery

charge. At best he hopes to get 10 years out of it, he is likely to get 10 years out of it.

To mitigate those sentences, he can count on the representation of all the prosecutors he has helped, and the deal was in return for testimony, not in return for convictions, in other words the condition of the deal as he stated it is not that you have to get your man, but you get on that stand and you tell the truth, that is your deal. It is the only possible deal we could ever get into --

THE COURT: Is that what you said, "It is the only possible deal" --

MR. CLAREY: "... that we can ever get into."

THE COURT: You just strike that, there is no testimony in the record on that.

That is just Mr. Clarey's personal opinion and has no place in this record.

He can only comment on the testimony which you have heard.

MR. CLAREY: (Continuing) Mr. Bloom on his cross-examination (sic) spoke about Mr. White's testimony and said that there are no less than three prior cases.

Now, ask yourselves, what has Mr. White got to

gain, first, back in November when he was talking to an FBI Agent and recounting several crimes that he had committed and those he said he committed, what did he have to gain by lying and fourthly implicating Mr. Hilton, either in that statement or in this testimony.

(Continued on next page)

K fls.

MR. CLAREY: (Continuing.) Here you will add one more prosecutor to his list of people who are going to represent cooperation to two Judges. The answer to what he is going to gain can best be expressed in Mr. White's own response to a question put to him by Mr. BLoom on cross-examination. I quote:

"I feel they would be harder on me if I said Hilton was there and he wasn't."

In facing his 10 or 20 years what does he need with a perjury charge and that is the context in which you have a perjury charge, not the nine offenses. What does he need a perjury charge with the possible knowledge of a sentencing Judge that he had falsely implicated Fred Hilton?

The answer is Avon White has very little to gain by coming into this Court and committing perjury in this particular case.

Now turning to Mr. Bloom's point that Avon White is apparently totally unworthy of belief because at the age of 16 he either faked insanity and fooled prison doctors or perhaps did not fool prison doctors and they just went along with it, to get into a better situation. Now, there is not one bit of testimony on this record concerning any professional

opinion as to the effect of any of the mumbo-jumbo contained in these psychiatric reports on a man's ability to sit on that witness stand and recount facts truthfully and accurately.

I submit to you that you should disregard these reports for just that reason.

If a psychiatrist had come in here and said well, this man is suffering from some type of psychiatric reaction which impairs his ability to tell the truth, well then you might give these papers some thought.

MR. BLOOM: I object, he has no duty to prove anything.

THE COURT: The defendant has no duty to bring in any expert at all. But I think the government has a right to comment on the absence of that type of testimony and the value of what is in the record in the light of the absence of that type of testimony.

MR. CLAREY: And also among these papers you will see government's exhibit 3-C which indicates that whatever mumbo-jumbo Mr. White was faking or not faking or was actually suffering from was cured as of such and such a date. The testimony both ways

I will submit to you was totally worthless. It can be of no help to you in evaluating any evidence in this case.

I am going to ask you to draw, as Mr. Bloom did, on your own human experience; on your ability to size up a person; on your common sense, which will enable you to tell is that man telling me the truth.

Look at his answers to questions. Look at his answers to questions like, "I didn't shoot that cop but I shot another one." What possible purpose would it serve for Mr. White to deny shooting one cop if he did it and admit in the same breath shooting another one? He got a plea to shooting one and it is a horrible thing he did and he admitted it. He did not equivocate. He admitted using aliases, he did not equivocate, "Yes, I used aliases."

Now, if he was so anxious to singe Fred Hilton as Mr. Bloom would have you believe, why would he say in answer to Mr. Bloom's question, the question was whether Fred Hilton was in on that shoot-out, and Avon White's answer was no, he was not in on that shoot-out. If he was vindictive and out to singe Fred Hilton at any price he could clearly have said sure he was. He told the truth, he told the

truth.

THE COURT: Mr. Bloom, one summation at a time if you do not mind. The government is summing up. Please try to restrain yourself.

MR. BLOOM: I am sorry, your Honor.

MR. CLAREY: Now, ladies and gentlemen, using that common sense and human experience, taking all the evidence in the case aside from Avon White's testimony, putting it together and seeing how it meshes together with Avon White's testimony, the inescapable conclusion is that not only did Fred Hilton steal a car and kidnap Professor Edgar on April 9, 1973, but that he stole that car with the specific intent to use it in a bank robbery the following day, which makes him guilty of a bank robbery in and of itself, and that he drove that car on April 10th, 1973 as a getaway car, which makes him guilty of armed robbery.

Thank you.

THE COURT: We will suspend at this time. The case will continue tomorrow morning at 9:30 when I will charge the jury. In the meantime, please keep an open mind. Do not talk about the case or think about the case. Wait until I charge you

tomorrow morning and after the Charge you will have an opportunity to discuss the case, not only the opportunity, but the obligation to discuss the case and that is the first time you may discuss it in accordance with your oath.

The jury is excused.

(The jury left the Courtroom.)

THE COURT: I want to say for the record the reason I reprimanded you, Mr. Bloom, twice you voiced your disapproval by some kind of a muffled laugh or shout, I don't know what it was.

MR. BLOOM: I was not aware of it.

THE COURT: I could not tell whether it was one shout or two, one may have been the echo.

MR. CLAREY: It is an interesting tactic, anyway.

THE COURT: But I thought I had to do it. It may have been involuntary.

MR. BLOOM: Your Honor, I did not deliberately do it.

I have some applications, your Honor.

THE COURT: All right.

MR. BLOOM: All based upon the summation of Mr. Clarey, and ask for a mistrial.

THE COURT: All right.

MR. BLOOM: The statement your Honor did strike although it was said, of course, to the jury, "What type of person carries the particular gun in question" -- improper.

THE COURT: What gave you the reason for referring to that.

MR. CLAREY: What is that, your Honor.

THE COURT: "It shows what type of person he is".

MR. BLOOM: Who carries the gun.

THE COURT: He is not charged with being a bad person. He is charged with being a bank robber.

MR. CLAREY: I could argue Ravitch that a man arrested with a gun is probative of the fact he is a bank robber. That is Judge Zavatt's case and it was affirmed, your Honor.

MR. BLOOM: What has that to do with it? When you say what kind of a person is this, if that is the argument, giving it any validity, it does not say only bank robbers, it says you are judging this man as a person.

THE COURT: I won't point out the government did not prove he did not have a license for it.

MR. CLAREY: If I charged it in the indictment I would have proved it.

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THE COURT: But carrying the gun is not a crime, it does not show a person is a bad person. Policemen carry guns.

MR. CLAREY: The possession of a gun.

(Continued next page.)

PM

THE COURT: I don't want to give you too much support for your argument, but I think it was a non-intentional, minor breach. I do not think it is prejudicial.

MR. BLOOM: Secondly, your Honor, the second ground a move for a mistrial, and the reason I delayed it is that I did not want to interrupt the Summation of Mr. Clarey, nor highlight the interruption. It might have irritated or prejudiced Mr. Clarey's position, and the interruption might have highlighted something, and I waited until the conclusion of the Summation to the jurors.

Secondly, your Honor, your Honor yourself noticed the only possible deal the Government could offer was to tell the truth, and that in effect is testimony by Mr. Clarey.

THE COURT: Yes, you expressed your personal opinion, which is improper.

MR. CLAREY: It is supported in the record, although not before the jury, by the letter I marked for identification, your Honor, which I wrote.

THE COURT: First, it is not in the record, and that is a self-serving declaration, and cannot be accepted as the possible truth. I do not know whether the

Government makes those kind of deals or not, but I am not interested in that. All I know is that there is nothing in the record to support that statement, and I think the objection is proper.

MR. CLAREY: At any rate, it was cured by any instruction.

THE COURT: I hope so. I hope to cure all the errors of the Assistant United States Attorneys, but I am not always successful.

MR. BLOOM: Based upon that error, I move for a mistrial.

THE COURT: Motion denied.

MR. BLOOM: Thirdly, your Honor, and this deals with what I think unfortunately has become one of the critical issues of the trial, and that I think it is unfortunate that Mr. Clarey raised it, but he asked the rhetorical question, "What does Avon White have to gain by naming Fred Hilton as the driver of that car?"

Well, your Honor, indeed prohibited me from showing what Avon White has to gain. Avon White does not just have to gain by naming some 152 pound friend of his. This is a man who is hot, according to every item I read in the Daily News back in early 1973. Fred Hilton is somebody they wanted, and Fred Hilton is somebody they

continue to want. Why -- Not because of a bank robbery, but because they believe him to be an active member of the Black Liberation Army.

Permitting Mr. Clarey to bring that up and say, Why, what could possibly be Mr. White's motive, what would he have to stand to gain, well, that question is easily answered by the fact that your Honor would not let me state that fact, that your Honor would not let me bring it into the record, into evidence.

THE COURT: I think it is taken out of context. I think the rhetorical question was asked in answer to your charges of the great gains that Mr. White would make if he implicated Mr. Hilton, and Mr. Clarey tried to show that the best he hoped for is ten years, and, of course, that saves him 165 years, plus two consecutive life sentences, by your computation. But what I think he was trying to say, ten years is still substantial, and that there was no motive to lie by bringing Mr. Hilton in.

Your argument, I know, again brings in what you deem is a violation of your right of due process by limiting the cross-examination. I fully understand it, and, Mr. Bloom, the Court of Appeals may agree with you if there is a conviction. I do not say that it is entirely

clear.

I thought that the cross-examination of Mr. White on his background and history, history of psychosis, nine felony convictions, nine arrests, rather, five or six or seven pending indictments, acts of cruelty committed during the criminal offenses, was so extensive and so deep that the injection of political philosophies into the trial could no nothing more than to serve to confuse the jury, create and generate sympathies and prejudices, and I think affect the credibility of Mr. White to an absolute minimum if he had nothing to defend himself as a pure white chorus boy, not white in the sense of skin color, I might add, just in the sense of purity, and this was the real area of examination, I would say, that you have a more substantial question, and I would be more troubled by it.

I am not entirely free from doubts.

MR. BLOOM: What I am saying, and please do not midunderstand me, I am not talking about the scope of the cross-examination so much --

THE COURT: I am talking about the scope of your cross-examination.

MR. BLOOM: I am talking about, just so it is clear for the record, that it was not my effort to put

in what indeed Mr. Hilton's political philosophy is, or is not. I am talking about what indeed was Mr. White's perception of how much the authorities wanted Mr. Hilton and for that reason, for whatever their perceptions were.

THE COURT: One of the thoughts I had was, if there is a conviction, of Mr. White being returned for examination on that issue, and I would ask the Government lawyers not to prepare him in any way or to discuss it with him, just bring him into court raw, without preparation, and give Mr. Bloom an opportunity to examine him on the state of mind on that account, solely for the purpose of completing the record, so that if there is a conviction and an appeal, let the Appellate Court know what Mr. White would have testified to, and match that against the cross-examination, and see if it would substantially affect his credibility.

MR. BLOOM: Your Honor, I submit that your Honor's theory makes sense to some extent, but it is beyond what Mr. White will say. It includes all the publicity that Mr. White would have been aware of, and the reason I do not know Fred Hilton from left field as being an important, you know, a wanted person, I would think in news articles and all the talk about Black Liberation Army, that becomes relevant.

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6 Summation - Clarey

THE COURT: Mr. Bloom, if there is a conviction, the jury has already spoken, and I have no concern about how it will affect the jury, and you will have a field day with Mr. White then. I have no objection to anything you might ask.

MR. BLOOM: Well, your Honor, just so the record is complete, I move for a mistrial based on the comment, the rhetorical question and answer, "What does Avon White have to gain by naming Fred Hilton?"

THE COURT: Motion denied.

R3 fls

(continued on next page.)

MR. BLOOM: I move for a mistrial with the -- based on Mr. Clarey's comment that we have failed to call a psychiatrist to testify about Mr. White's past psychiatric history would effect his credibility here today.

THE COURT: No, I think I made it clear to the jury and I might have even gone further. I was tempted to say to the jury, of course, the defendant has the right to call a psychiatrist. They do not have any obligation to do it but just introducing hospital reports consisting of a diagnosis which is understandable only to the specialist in the field is of little value to the jury and I think Mr. Clarey's comments were not only fair but appropriate. He said no more than, "You have this material but I do not see how you can understand it without expert opinion as to what it means and I suggest to you that you do not try to read everything into it, do not speculate on it."

MR. BLOOM: Again, so the record is clear, I move for a mistrial on that ground.

THE COURT: Denied.

MR. BLOOM: Lastly, your Honor, as to the time your Honor noticed I snorted or whatever it is.

THE COURT: Well, it was rebuttal.

MR. BLOOM: All right, your Honor, whatever it was. Mr. Clarey indicated, your Honor, that if Avon White wanted to really be vindictive as against Fred Hilton, he could have put him in the shoot-out which resulted in Avon White's arrest. That is a disingenuous comment. The arrest was in an apartment, everybody was taken out of the apartment. Mr. Hilton was in jail at the time.

THE COURT: I do not know that and the jury does not know that.

MR. BLOOM: You do not know that, your Honor, but he knows it.

THE COURT: I thought the comment was right on target because your entire argument was that Mr. White wanted to deliver Mr. Little up and there was some animous there, the basis was not clear, but that Mr. White's target was Mr. Little.

All that Mr. Clarey did was point out when the opportunity to lie about Mr. Hilton presented itself in the shoot-out and when you asked him the question was Mr. Hilton there, he said no. He could have lied about that.

MR. BLOOM: Of course he could have lied about that, your Honor. This man, Mr. Hilton, had been in jail for three months.

THE COURT: That I did not know.

MR. BLOOM: The police cleared everybody out of the apartment and the six people in the apartment with Mr. White were Mr. Kearney and Mr. Kays and three women and for Mr. Clarey to say that indeed as to that instance Mr. White could have put Mr. Hilton in that incident if he were vindictive has to be disingenuous because believe me I would like to have seen that, I would like to have seen him say he was there. Obviously the question was asked for another purpose. Obviously the answer was he was not there but then again your Honor did not know, the jury did not know and that is the problem.

Mr. Clarey knows very well that Mr. Hilton could not possibly have been put in that by the wildest stretch of anybody's imagination, even Mr. White's.

THE COURT: You asked the question, Mr. Bloom, it is in the record, and I thought it was fair comment. I was not aware of the possibility of Mr. Hilton being there was nil.

MR. BLOOM: I am not saying your Honor made a bad ruling. What I am saying is Mr. Clarey made a comment to the jury in his summation that was not a good faith comment.

A 431

THE COURT: Well, I do not know, I do not think that is prejudicial. It certainly does not sound as bright with the background given to me as it did when he made the comment but I think it was a fair comment.

Did you know Mr. Hilton was in jail at the time.

MR. CLAREY: Well, your Honor, I honestly did not know which shoot-out was being referred to. There were several shoot-outs. Mr. Bloom carefully picked one out that he knew apparently White could not put Hilton into, leaving all the bank robbery shoot-outs, and so on, aside. There were several other shoot-outs on March 6th and I can honestly say I did not know which shoot-out was referred to.

THE COURT: When you made the comment to the jury did you realize that Mr. Hilton could not possibly have been at that shoot-out?

MR. CLAREY: No I did not, it was not in my mind.

MR. BLOOM: In any event, I move for a mistrial on that count.

THE COURT: Motion denied.

MR. BLOOM: Lastly, your Honor, and toward the end of Mr. Clarey's summation, he in effect usurped

your Honor's function and indicated to the jury that if Mr. Hilton took a car on April 9 with knowledge the car was to be used in a bank robbery that makes him guilty of a bank robbery.

THE COURT: I may charge that.

MR. BLOOM: That may or may not be true.

THE COURT: Of course, I would have to charge they would have to find the bank robbery was completed. In order to have aiding and abetting you must have a completed crime.

MR. BLOOM: That may or may not be true but as of yet Mr. Clarey is not a Judge of this Court and it is not his function to instruct the jury as to what makes Mr. Hilton guilty or not guilty in terms of the law of a bank robbery.

THE COURT: That is always arguable. Sometimes lawyers object to their adversaries anticipating the Judge's charge in summation. Yet I thought that was very-reasonable in view of the ruling on the requests. I permit lawyers to comment on whatthey expect the Judge to charge, otherwise there would be little sense in ruling on requests to charge before summation. I hear that objection very often. Of course, if they misstate the charge then I will interrupt and say that is not exactly what I intend to say.

MR. BLOOM: In any event, I move for a mistrial on that ground.

THE COURT: Motion denied.

MR. BLOOM: And on the combined ground of the errors contained in the matters I have brought to your Honor I move for a mistrial.

THE COURT: Motion denied.

9:30 tomorrow gentlemen.

(Whereupon, at 5 o'clock p.m. a recess was taken until 9:30 o'clock a.m. of the following day.)

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

A 434

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UNITED STATES OF AMERICA, :

-against- : 74-CR-54

FREDDIE HILTON, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

April 10, 1975
2:00 o'clock p.m.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

IRA RUBENSTEIN
OFFICIAL COURT REPORTER

(Time noted: 2:10 o'clock P.M.)

THE COURT CLERK: United States of America against Freddie Hilton.

THE COURT: "By order dated the 18th of March, 1975, the Court of Appeals directed that in view of the fact that defendant appellant is incarcerated pending appeal, this, the District Court, promptly conduct a hearing to resolve the issues before it and upon the filing of the District Court's decision, the appeal be resorted to a priority position on our calendar for argument."

I was made aware of this order on March 26th, and I immediately wrote Mr. Bloom the following;

"The hearing is directed by the Second Court of Appeals in its order March 18, 1975, is set down for Monday, March 31, 1975, at 10 A.M. You are directed to be present and ready to proceed at that time."

I directed the United States ATtorney to be ready to proceed.

I received a telephone call from Mr. Bloom telling me that he was engaged in a trial of New York against Gabriel Torres, and that the trial would not be completed until sometime during the week of April 7th. I asked him to write me a letter

and tell me that. And he wrote me a letter just saying that he's still engaged and he estimated the case would take two to three more weeks.

I spoke with Mr. Bloom and I suggested that it would be the 11th and he told me that Mr. Hilton would not appear in court on Friday of the week, but that at Thursday at 2 o'clock, would be a convenient time.

I directed the Government to produce all the witnesses who had anything to say on the matter at issue, and this morning, at 11:15, I got a call from Mr. Bloom, my office did, it says:

"Bloom called to say that his jury went out last night. He does not know if they will be through by 2 P.M. He is in New York Supreme Court, Center Street and he is calling back at 12:30."

I left word with my office that if Mr. Bloom called, that instead of 2 o'clock, I could possibly wait until 3 o'clock.

I had previously advised Mr. Bloom that beginning April 14, I have a 14-defendant trial that will start. I'll probably be engaged every day of the week.

On Friday, the 18th, I have a long motion calendar and there would not be sufficient time to

hold the hearing and that the trial that's scheduled to start April 14th might not be completed until sometime in May.

And the mandate of the Court of Appeals says, "promptly conduct a hearing."

Mr. Bloom called back and he was told that I'd hold it until 3 o'clock. He just left word that curiously advised the Court that he was not appearing.

Now, what arrangements have you made? I know that you asked me if we couldn't hold the hearing on Friday, because Mr. Clary had an appointment in Connecticut.

I just said he'll just have to cancel that appointment and get here on Thursday.

MR. BEHAR: Your Honor, if I may.

The fact of the matter was that I had requested that the hearing be held on Friday.

Mr. Clary, who's now in an executive position with the Nassau County District Attorney's office had to meet with the staff of one of the district attorney's offices, county district attorney office in the State of Connecticut because he is reviewing a program that they are putting on; whereby they're being funded by LEA Fund, and it was

rather an important meeting.

Upon your direction I called back to Mr. Clary and I told Mr. Clary that Judge Mishler ordered the hearing on for today and gave a personal apology and said he had to be here.

I wish the record to reflect Mr. Clary is in court today.

In addition, Mr. Trubner, former Assistant United States Attorney from the Southern District of New York, who is now practicing out of State, is in court today because of this hearing.

In addition thereto, Agent McCarten from the FBI is in court today.

There is also another witness who is present in the building today.

THE COURT: Mr. White, I assume?

MR. BEHAR: Yes, your Honor.

Your Honor, on the 31st of March, when your Honor first set this matter down for a hearing, the Government appeared in court and said it was ready to proceed.

At that time, it was put over with our understanding, until the 18th of April, and Mr. Bloom stated that he could not have Mr. Hilton appearing in court on a Friday.

Your Honor put it over for Friday.

The Government is ready to proceed today, and that change of events from the 18th to today caused the Government witnesses some hardship but the Government does remain ready to proceed today.

THE COURT: Are you ready to proceed, Mr. Hilton?

MR. HILTON: Mr. Bloom is not here, sir. I'm not ready.

THE COURT: I'm ready to appoint another counsel for you if --

MR. HILTON: Mr. Bloom is not here and I'm not ready to proceed.

THE COURT: Mr. Bloom is unavailable and I have had much difficulty --

MR. HILTON: Mr. Bloom is not here.

THE COURT: I beg your pardon?

MR. HILTON: I don't want to hear it. Mr. Bloom is not here and I am not going to take another lawyer. It's obvious Mr. Bloom is in Manhattan with a jury waiting to find out the verdict. He's not here and I'm not taking another lawyer.

THE COURT: We'll proceed anyway. You can be seated and you can ask any questions you wish. We'll proceed with the hearing.

Can't wait for Mr. Bloom's convenience. I've done that on too many occasions with Mr. Bloom and the Jackson case, I think we had three or four adjournments.

I think in this very case in Hilton, I don't think I had to adjourn at least once, because Mr. Bloom wasn't available.

MR. HILTON: Well, you can proceed without me, I'm going to step outside.

THE COURT: Now, you'll stay in the courtroom. You'll stay in the courtroom.

All right, let's proceed.

This involves, as I recall it, a letter that a Avon White wrote to Mr. Clary dated FEbruary 8, 1974.

MR.BEHAR: Your Honor, just for the record. I wish to state that on the 27th day of February, 1975, our office wrote to the Court of Appeals which at that time had jurisdiction of this matter requesting the hearing herein.

At that time, a copy of that letter was made to Mr. Bloom, with enclosures and the primary enclosures being the two letters that are in question here today.

THE COURT: Two letters, you say?

MR. BEHAR: Yes, your Honor.

THE COURT: One to Mr. Trubner; is that the other one?

MR. BEHAR: One to Mr. Trubner and one to Mr. Clary.

THE COURT: Is that undated, Mr. Trubner's?

MR. BEHAR: The only copy that is available to us appears to be undated.

I have learned from Mr. Henley in the Southern District of New York, in fact, the letter is dated February the 8th, 1974, the same day as Mr. Clary's letter.

But the Xerox copy missed the date and the original, I think, is a court exhibit over in the Southern District.

THE COURT: All right, you may proceed.

MR. BEHAR: The Government will call Robert Clary to the stand.

(continued next page.)

ROBERT L. CLAREY, called as a witness, having first been duly sworn by the Clerk of the Court, was examined, and testified as follows:

THE COURT: I assume you're ordering the transcript of this hearing?

MR. BEHAR: Daily copy, your Honor.

THE COURT: Beg your pardon?

MR. BEHAR: We're ordering daily copy, your Honor.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. BEHAR:

Q What is your present occupation, Mr. Clarey?

A I'm presently assistant District Attorney in Nassau County, New York.

Q And what was your occupation in January of 1974?

A I was then, an assistant United States Attorney for the Eastern District of New York.

Q At that time, Mr. Clarey, did you meet one, Avon White?

A Yes, I did.

Q And was Mr. Avon White a witness in a matter

you've placed before the Grand Jury of the Eastern District of New York?

A Avon White testified in this Grand Jury in the case of United States versus Freddie Hilton. He was an accomplice witness.

Q Following Mr. White's testimony before the Grand Jury, did you have any communication with Mr. White from that time forward?

A Shortly after his testimony in the Grand Jury, I received a letter, a hand-written letter, from Avon White.

Q Do you recall approximately when?

A Sometime early, I believe it was early in February of 1974.

THE COURT: Do you recall the date that he appeared before the Grand Jury?

THE WITNESS: Not offhand, your Honor, no. I know it was in January of '74, but I don't have the exact date.

MR. BEHAR: Like this marked for identification, please.

THE CLERK: One page document marked Government exhibit 1 for identification in the hearing.

(So marked.)

Q Mr. Clarey, I'd like you to take a look at Government exhibit 1 for identification and ask you if you recognize that document?

A Yes. This is the letter I received as dated 2/8/74, letter I received from Avon White.

Q And how do you know that, Mr. Clarey?

A Well, I recall, I see my handwriting on the letter, for one thing. There is an indication at the top upper left hand corner of the letter saying, "File, U.S. versus Hilton," which would have been direction to my secretary to file that.

This is in my handwriting.

Q Thank you, Mr. Clarey.

THE COURT: Had the indictment been returned by this time?

THE WITNESS: Yes, your Honor. I believe the indictment was returned either on the same day White testified or the day after.

THE COURT: Did you put the docket number on that?

THE WITNESS: I did not write the docket number because I wouldn't have known the docket number offhand.

When I received the letter, I just write , "File U.S. versus Hilton," that's what I did.

THE COURT: The case gets a docket number on filing the indictment?

THE WITNESS: That's correct, but I didn't have any file on my desk. My secretary would have dug out the file and filed the letter in the file.

THE COURT: Let it be marked.

MR. BEHAR: The Government moves its admission.

THE CLERK: Government exhibit 1, previously marked for identification now marked in evidence in the hearing.

MR. BEHAR: Mr. Hilton, do you wish to see the letter?

Let the record indicate Mr. Hilton waves his hand.

THE COURT: What file did you put it in?

THE WITNESS: Well, my directions would have been for her to file this letter in the Hilton indictment file.

THE COURT: Is that the office file?

THEWITNESS: The United States Attorney's file. I believe the file is on that, is on Mr. Behar's table right now. When an indictment is

returned a file is made.

THE COURT: You only have one file for this case in your office?

THE WITNESS: Yes.

THE COURT: That is the file, the letter went into?

THE WITNESS: In my former office, we only would have one file for the indictment, United States versus Hilton, Bank Robbery case.

If Hilton was involved in another case, there would have been another file. But to my knowledge he was not, it was only one bank robbery file.

THE COURT: That was the file that this letter went into?

THE WITNESS: Right. I directed that letter be put in this file.

THE COURT: All right.

Do you know whether it was?

THE WITNESS: I'll have to assume it was. I don't know because I didn't see my secretary physically put it in the file.

THE COURT: But you examined that file at some time before the trial of this case?

THE WITNESS: That's correct.

THE COURT: Did you ever see that letter in that file?

THE WITNESS: I don't recall ever seeing the letter again, after giving my secretary the directions. Could very well have been in the file, I just don't recall specifically seeing it.

Q Mr. Clarey, as a result of receiving Government exhibit 1 in evidence, what, if anything, did you do?

A I don't recall doing anything specifically. The letter complaint, was a complaint by Mr. White that he was confined in solitary confinement in Sing Sing State Prison. If I did anything at all, it would have been to call the FBI agent on the case, I don't specifically recall calling the FBI agent on the case.

I don't believe I really did anything about the letter.

Q Who was the FBI agent on the case?

A Agent McCarten was the case agent in this case.

Q Mr. Clarey, did you communicate with any other prosecutorial authority?

A I don't recall communicating with any other prosecutorial authority about the letter.

Q After, excuse me, Mr. Clarey, do you recall writing on the letter, "File U.S. v Hilton"?

A No, I don't, but I know that's my handwriting and it would have been in accord with my general procedure when I receive a letter which is related to a case.

In my office, I would direct the letter be filed in the case file.

Q Did you, after seeing the letter for the first time, and prior to this past two days, had you ever seen that letter again?

A I don't recall ever seeing the letter again until you just handed it to me now.

Q Mr. Clarey, did there come a time when you prepared for trial in U.S. v Hilton?

A Yes.

Q Did you prepare certain 3500 material?

A Quite extensively, especially with regard to Avon White.

Q Mr. Clarey, do you recall what, if any 3500 material you prepared?

A With regard to Avon White, I knew he had testified on at least two or three prior occasions in other courts. I sent for minutes in the other trials and there were two trials in the Southern District of New York.

There were two bank robbery trials and both involving JoAnn Chesimar. And I sent for the minutes of those trials for Avon White's testimony from the minutes of those trials.

I believe I sent for any prior Grand Jury testimony of Avon White. I also sent, I believe, for testimony of Avon White in a trial in New York County, if my memory serves me correctly.

Q Do you recall whether or not you sent for testimony of Avon White in a trial involving one Melvin Kierney?

A I believe I did. Are you referring to bank robbery in the Southern District of New York?

Q Yes.

A I believe I did.

THE COURT: Instead of "believing," don't we have a record of all the 3500 material that wa turned over?

MR. BEHAR: Yes, your Honor, but it's somewhat sketchy, and I think we'll get to the reason why. I think the record is clear as to why.

Mr. Bloom had a substantial amount of this material at the time of the trial already.

THE COURT: Don't you have the 3500 material

here?

MR. BEHAR: The actual -- I can have it brought up in a moment.

THE COURT: But it is part of the case in chief, isn't it?

MR. BEHAR: Yes, your Honor.

THE COURT: All right.

So, what Mr. Clarey sent for isn't of particular significance, but what he turned over to Mr. Bloom might be; isn't that true?

MR. BEHAR: Your Honor, the question of inadvertence and the --

THE COURT: I want to know what he did turn over. All youre asking Mr. Clarey is what he got from other courts. Did you turn over everything that you received?

THE WITNESS: Yes, I did. My usual practice was to mark each separate transcript as I turned it over to Mr. Bloom, but I believe in this case I went to Mr. Bloom and asked him either on the record or off the record, do you have this already.

And some of the cases, I believe Mr. Bloom had participated in, and obviously had it all already.

THE COURT: Did you ever hear me say, "Make sur

you mark all 3500 material, Mr. Clarey,"at least on 10 occasions?

THE WITNESS: I suppose I have, your Honor.

THE COURT: I hope you did it in this case.

THEWITNESS: I hope I did, also.

Q Mr. Clarey, are the --

THE COURT: I don't need to speculate on what went over. I think you have the material and it's in the case in chief, and if you can just point out to the Court the material that was turned over that includes the material in this letter, it would be helpful.

At least your claim that it was given, at least once.

MR.BEHAR: Your Honor, that's not the Government's claim.

THE COURT: All right.

Q If I may just one moment, your Honor:

Mr. Clarey, as to the transcripts, did you offer to turn those over to Mr. Bloom at the beginning of trial?

A Well, I believe it was at the beginning of trial. It was certainly before Avon White testified. My recollection is that prior to having the jury come out the

first day of trial, we turned it over or offered to turn it over.

Q Would anything refresh your recollection?

A Suppose the transcript of the case would.

Q I ask you to look at, specifically, page 167, following the opening statements prior to the first witness taking the stand.

A Following that opening statement there was a colloquy continuing for several pages concerning exhibits, and I'm turning over apparently a brief argument or objection by Mr. Bloom concerning redacted material; in other words, I turned over part of a report which I felt was relevant to this case, remainder of the report I felt was not relevant to the case.

Q Mr. Clarey, does that refresh your recollection?

A I turned over all 3500 material after opening statements.

Q Did you turn over the transcript that you previously referred to?

A Yes, on page 169 I say, "I have testimony by Mr. White in various trials," and I turned that over beginning on page 169.,

Q Approximately how many pages of transcript was this, if you recall?

A It was, must have been hundreds of pages of transcript. I don't know how many hundfeds.

Q In addition to the previous testimony of Mr. White, was there anything else included in that 3500 material that you recall?

A My recollection is that there was some information concerning threatment of Mr. White in Matawan State Hospital, which became an issue on cross examination in prior trials, and which I had acquired and turned over to Mr. Bloom. I don't know whether it was a psychiatric report or a psychiatric history, but I recall something from Matawan State Hospital.

Q Looking at the transcript refresh your recollection?

A On page 168, I say, and I quote, "The first item of 3500 material is a psychiatric report from Great Meadow Correctional Institution," which I said, at that time I believe Mr. Bloom already had.

Next page there, Bloom said, "I have it, your Honor, and I don't need that."

I don't see anything from Matawan.

Perhaps it was Great Meadow and I knew Mr. White spent time in Matawan and I was assuming that it was Matawan.

Q Did you also turn over FBI reports to Mr. Bloom at that time?

A I believe so.

On page 167 I see myself turning over an FBI report of an interview by Avon White by Special Agent Murphy and Colson.

Q You said before, "You believe so." Does that refresh your recollection?

A Yes, it does. I do recall turning that September 17, 1973, FBI report over to them.

THE COURT: Do you know whether anyone on behalf of the Government responded to this letter?

MR. BEHAR: Your Honor, I was going to get to that.

THE COURT: You are?

MR. BEHAR: Yes.

THE COURT: All right.

(continued next page.)

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Q Mr. Clarey, do you recall whether or not you turned over Government exhibit 1 in this hearing?

A I recall that I did not turn it over.

Q Do you recall whether or not, do you recall why you didn't turn it over?

A I forgot to turn it over. It never occurred to me to turn it over.

The letter, all I can say, I forgot about the letter at the time of trial.

THE COURT: Well, this is the 3500 material which has been previously marked.

MR. BEHAR: Part of it, your Honor.

THE COURT: Part of it?

MR. BEHAR: The problem, your Honor, is I think the transcript is not marked as I think, and the reason why, I think is clear upon the transcript of the trial.

Where Mr. Bloom turned to Mr. Clarey and said, "I have more than you do."

THE COURT: Well, did Mr. Bloom represent any of the defendants in any of those trials; do you know?

THE WITNESS: He may have represented Freddie Hilton in the two prosecutions in the Southern

District. There was a mistrial and a second trial. I'm not certain he did, but I believe he did.

MR. BEHAR: Your Honor, we have another witness who will establish that.

THE COURT: All right.

You say those transcripts are not marked as 3500 material?

MR. BEHAR: No, your Honor. If I may, your Honor, --

THE COURT: Well, the exhibit sheet should be marked here to show what was turned over.

Do you see any transcripts marked?

MR. BEHAR: Your Honor, I would like to call the Court's attention to page 167 of the Hilton trial of July 16, 1974, particularly starting at line 6, Mr. Clarey states:

"I have testimony by Mr. White in various trials including the trial in the Southern District on 6/24/74."

"Now I don't know whether -- do you have this, Mr. Bloom?

"MR. BLOOM: I have borrowed somebody's copy, Mr. Berman, but I have -- I have taken 122 to pages -- well -- I even have some --

"MR. CLAREY: May I see it? I think you may have more than I. I have page -- starting at 134 to 52 --

"MR. BLOOM: I have everything. I have that, your Honor.

"MR. CLAREY: What about testimony in other trials, Mr. Bloom, some two of them you participated in?

"MR. BLOOM: I have all the testimony in all the trials."

THE COURT: Whose question was that?

MR. BEHAR: Excuse me, your Honor?

THE COURT: Whose question was that?

MR. BEHAR: Mr. Clarey;

"Now, what about testimony in other trials, Mr. Bloom, some of them you participated in."

"Mr. Bloom: I have all the testimony in all the trials.

"Mr. Clarey: And the Chesimar-Hilton trial, both trials?

"Mr. Bloom: Yes, I do."

THE COURT: All right. That answers the question.

MR. BEHAR: The point I wish to make, your

Honor, is that prior to that -- well, if I may, can I have this marked as a bulk exhibit?

THE COURT: What should we mark it? It doesn't identify the exhibit; what's the sense in marking it? It's a bulk exhibit and it's meaningless.

MR. BEHAR: I will have the witness identify it.

THE COURT: We'll mark it. It seems to be about five pounds of transcripts.

THE CLERK: Numerous pages of transcript, Government exhibit 2 for identification in the hearing.

(So marked.)

(continued next page.)

DIRECT EXAMINATION

BY MR. BEHAR: (continuing)

Q Mr. Clarey, I'd like you to take a look at Government Exhibit 2 for identification.

A Do you want me to identify it, if I can?

Q First, could you tell me if you have ever seen these various transcripts before?

A Yes, I have.

Q And where have you seen them, Mr. Clarey?

A These are transcripts which I acquired of trials in which Avon White had testified previous to the case of U.S. v Milton, which I tried.

Q What, if anything, did you do with those transcripts?

A I acquired them to turn over as 3500 material.

Q Did you attempt to turn those transcripts over as 3500 material?

A Yes. I compared them with transcripts Mr. Bloom and I already had.

Mr. Bloom and I went through them together and for the bulk of these transcripts, Mr. Bloom indicated that he had already seen them and had had an opportunity to see them, had them in his possession.

So, since none of these are marked 3500, I would say

that Mr. Bloom had all of these, and had indicated to me that he had already had all of these transcripts.

Q But previous to this time you had prepared them for presentation for Mr. Bloom?

A Yes. I had acquired them from the various prosecuting authorities and turned them over.

MR. BEHAR: May I (indicating document)?

THE COURT: Let it be marked.

THE CLERK: Marked in evidence in the hearing, as Government's exhibit 2.

(So marked.)

MR. BEHAR: Excuse me, your Honor.

(Pause.)

Q Mr. Clarey, I'd like you to look at three documents marked Government's exhibits 33, 33A and 33B from the trial of 72-CR-54, and I ask you if you recognize those?

A Yes.

The sheaf of documents marked Government's exhibit 3 for identification, is a psychiatric report concerning Avon White, the Great Meadow Correctional Institution.

This is a report which I turned over to Mr. Bloom as 3500 material.

Q I'd like you to look at the document marked

3A, please, and can you tell us what that is?

THE COURT: I don't think it is necessary to re-introduce into this hearing these matters that are already marked in the case in chief.

MR. BEHAR: Thank you, your Honor.

THE WITNESS: 3A is another piece of 3500 material which I turned over. It is apparently some type of psychological workup on Mr. White, which took place in '68, August, '68.

THE COURT: I deem everything that happened in the case in chief as part of this hearing and I must determine the effect of the absence of any documents, and I can only do it in terms of the trial as to what Mr. Bloom had available for cross examination and whether it touched on this subject matter directly or indirectly and whether he examined on it.

Q Mr. Clarey, during the time from the receipt of Mr. White's letter by yourself, up until the time of the inception of the trial in U.S. v Hilton, did you take any action to have Mr. White moved from Sing Sing prison or get him out of administrative segregation or solitary confinement?

A I personally took no action to have him moved.

I am sure I issued a writ of habeas corpus or drew up a writ of habeas corpus to have Mr. White brought down for trial and I believe he was brought down a week prior to the beginning of trial.

Q Besides that, or prior to that, did you take any other action?

A Not to my knowledge.

THE COURT: Did you direct anyone else to do anything for Mr. White?

THE WITNESS: I did not.

I may, as the date of trial approached, within a week or so, prior to trial, I may have spoken with Mr. Truebner of the Southern District as to what would ultimately happen to Avon White after my trial was over; if transferred, where?

THE COURT: Which trial came first, this trial or the Southern District Trial?

THE WITNESS: My trial was the last federal trial.

I believe he testified in the Bronx after my trial, recently. Perhaps as recently as December of '74 -- Bronx State Court.

Q Mr. Clarey, did you make any promises or representations to Mr. White during the same period of time?

From the time you received the letter, up until the time you issued the writ to have him brought to this courtroom in July of 1974, did you make any promises to Mr. White about what efforts you would or could take to have him moved from Sing Sing prison and removed from administrative segregation and/or solitary confinement?

A No, I didn't. I don't believe I communicated with Mr. White in that period of time.

THE COURT: At any time during the trial or any time during your preparation of Mr. White for trial, did he ever make any reference to the letter or any of the matters contained in the letter?

THE WITNESS: I don't recall him making any reference to the letter.

MR. BEHAR: No further questions.

THE COURT: Do you have any questions, Mr. Hilton?

MR. HILTON: (indicating the negative.)

THE COURT: Next witness.

MR. BEHAR: Mr. Truebner, please.

THE WITNESS: May I be excused?

THE COURT: Yes, go on to your duties in Mineola.

P E T E R T R U E B N E R , having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: STate your name and spell it for the record, please?

THE WITNESS: Peter Truebner, T-r-u-e-b-n-e-r.

DIRECT EXAMINATION

BY MR. BEHAR:

Q Mr. Truebner, what is your occupation?

A I am an attorney.

Q And what was your occupation on February 8, 1974?

A I was assistant United States Attorney in the Southern District of New York.

Q Do you still practice law in the State of New York?

A No, I do not. I am now with a firm in Hartford, Connecticut.

Q In connection with your position as an Assistant U.S. Attorney in the Southern District of New York, Mr. Truebner, in February of 1974, were you acquainted with one, Avon White?

A I was.

Q Had Mr. White previously been a witness for the United States Attorney's office for the Southern District of New York?

A He had.

Avon White was a witness for the Government in the trial of United States of America v. JoAnne Chesimard and Freddie Hilton.

Mr. White was also named as a defendant in this case. He had entered a plea of guilty and testified for the Government.

Q How many times was this case tried?

A It was tried twice, both in the month of December, 1973.

The first trial before Judge Gagliardi ended in a hung jury, and the second trial ended in an acquittal.

THE COURT: Before Judge Bauman?

THE WITNESS: That is correct, your Honor, yes.

Q In February of 1974, Mr. Truebner, was Mr. White to be a witness for the United States Attorney's office for the Southern District of New York in any future trials?

A I believe he was, yes. The exact trials and

the time when they would take place, had not yet been set, but it was my understanding that Mr. White would be a witness for the Government and for different state law enforcement agencies in future trials.

Q Mr. Truebner, I direct your attention to the early part of February, 1974, and ask you if you received a letter from Mr. White at that time?

A I did.

THE CLERK: One page letter marked Government's exhibit 3 for identification in the hearing.

(So marked.)

Q Mr. Truebner, I'd like you to take a look at the photostat marked as Government's exhibit 3 for identification, and I ask you, can you identify either that or what that is a photostatic copy of?

A It appears to be a copy of a handwritten letter to my attention signed by Avon White.

Q Do you recall the date that -- have you ever seen that letter before, the letter that that is a photostatic copy of?

A I have never seen the original except for the time when I received it.

Q Do you recall approximately when that was?

A This photostat bears a date stamp of

February 12, and I would suspect that I received it at or about that time.

Q Do you recall what date the original -- if the original letter was dated?

A I do not recall.

MR. BEHAR: The Government would offer it.

THE COURT: Let it be marked.

THE CLERK: Government exhibit 3 in evidence, at this hearing.

(So marked.)

Q Mr. Truebner, as a result of receiving this letter, what, if anything, did you do?

A I contacted two different people, first, the assistant District Attorney Jonas Gelb in the Bronx, and second, Mr. John Curley, Avon White's attorney.

Q And do you recall the content of your communications with Mr. Gelb and Mr. Curley?

A Starting with Mr. Gelb, I advised him that I had received this letter; that Avon White was very unhappy with the particular situation, and that based on my experience with White -- we had spent, oh, 40 or 50 hours together inpreparation of these two trials -- that he was a gregarious man and it was difficult for him to be in segregation and I thought it would be helpful if

his circumstances could be changed.

Q Do you remember what, if anything, Mr. Gelb said to you?

A Mr. Gelb said that Avon White was expected to be a witness in a trial in Bronx County shortly, and it was necessary that he remain at Sing Sing so that he could be called to the courthouse on short notice.

We also discussed the problem of Avon White's own safety, which is a matter I had discussed with Avon on more than one occasion and we agreed that it would be best for him to stay segregated from the general prison population.

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THE COURT: Do you know if he was kept in solitary or was that his way of saying, "segregation"

THEWITNESS: As I understand it, his letter did mention solitary confinement.

I did find out at a subsequent time that in fact, he was in so-called administrative segregation.

I don't know the practical differences between those two, sir.

BY MR. BEHAR:

Q Did you find at a later time what Mr. White referred to in the letter as solitary confinement was, in fact, administrative segregation?

A Yes, I did.

THE COURT: Doesn't administrative segregation give him an access to others also held in some kind of security within the prison?

THE WITNESS: Your Honor, I would only be speculating on what administrative segregation involves.

THE COURT: All right.

Q Do you recall, Mr. Truebner, what, if anything you said to Mr. Curley?

A I explained the program to Mr. Curley and

advised him of the contents of the letter and told him that I had called Mr. Gelb.

Mr. Curley recognized this particular thing as a program, but was also aware of possible danger to Avon, should he be housed with the general prison population in any one of a number of institutions and he believed, for the time being, this was the best possible solution.

THE COURT: At this time Mr. White was under State sentence?

THE WITNESS: No, your Honor.

He was pending trial in the Bronx and there had been no disposition.

He was pending sentence before Judge Gagliardi after a plea to a subsequent bank robbery count in the same indictment which named Chesimard and Hilton.

THE COURT: Why was he kept at Ossining pending trial?

THE WITNESS: He had been originally arrested by the local authorities, I believe, in September of '73. At that time he was taken into State custody so that whenever the Government wanted him, it was necessary to issue a writ of habeas corpus

ad prosequendum.

At one time he was at the Federal House of Detention at West Street in so-called administrative segregation, but that turned out to be quite a problem because of Andrew Jackson, I believe, and some other prisoners there, specifically, Mr. Hilton as well, and based on information which came to the attention of the Government, it was decided that he should not remain at West Street and therefore, the writ was satisfied, and he was returned to the Bronx.

If he was to testify in other trials in the Southern District, the dates of those trials, simply, had not yet been set as of February of 1974.

The case on which he testified in December had been an acquittal and for all practical questions was closed.

Q Mr. Truebner, what, if anything else, did you do as a result of receiving that letter from Mr. White?

A I wrote Mr. White at Sing Sing, acknowledged receipt of his letter, and told him that I had contacted both Mr. Gelb and Mr. Curley and that I sympathized with his predicament, but I believed that nothing could be done at this time. If any progress could be made, we would do

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so.

THE CLERK: Letter marked Government's exhibit 4 in the hearing.

(So marked.)

Q I'd like you to take a look at Government's exhibit 4, Mr. Truebner.

It is a photostatic copy of a document, and I ask you if you recognize either the photostatic copy or the document from which that photostat was made?

A This appears to be a copy of my letter to Avon White dated February 19, 1974. It is addressed to him at the prison at Ossining.

THE COURT: It may be marked.

THE CLERK: Received in evidence as Government exhibit 4 in this hearing.

(So marked.)

THE COURT: May I see that?

(Document handed to Court.)

(Pause.)

Q Mr. Truebner, did you do anything else as a result of receiving this letter?

A No, I did not.

Q Did you contact anyone else?

A No, I did not.

Q Did you contact any prison authorities at Sing Sing prison?

A No, sir.

Q Mr. Truebner, as to the letter you received from Mr. White, what, if anything, did you do with that? If you recall?

A I filed it in the United States Attorney's file involving this entire series of cases.

The file itself was captioned U.S. v. Rivers and it was included in a large file drawer labdied BLA, Chesimard et al.

MR. BEHAR: Your Honor, may I ask the witness to step down for just a moment?

THE COURT: Sure.

(Witness complies.)

(Whereupon witness and Government counsel conferred outside the hearing of the reporter.)

(Whereupon, the witness resumed the witness stand.)

DIRECT EXAMINATION

BY MR. BEHAR : (continuing)

Q Mr. Truebner, did there come a time when you did call Mr. White to the stand again as a witness in a trial in the Southern District of New York?

A No, sir.

Q Did he come to the Southern District of New York as a witness in a trial?

A He did.

My best recollection is that in April of 1974, he was again brought to the Southern District courthouse for purposes of preparing for the trial of U.S. v. Carney, et al., Melvin Carney.

That was being handled by Assistant United States Attorney Robert Hemmley, and I was there really, to say hello to Avon and introduce Avon White to Mr. Hemmley.

Q At that time, Mr. Truebner, did you learn from where Mr. White had come?

A Mr. White advised me that he was still at Sing Sing and still in what he considered to be solitary confinement.

Q And what, in fact, was his status at Sing Sing? Was his status administrative segregation?

A Yes, I found that out subsequently.

MR. BEHAR: I have no further questions of this witness.

THE COURT: Do you have any questions, Mr. Hilton?

MR. HILTON: No.

THE COURT: You may step down.

THE WITNESS: Thank you, your Honor.

THE COURT: Next witness.

MR. BEHAR: The Government calls FBI, Special Agent Robert McCartin to the stand, your Honor.

R O B E R T M. M C C A R T I N, having been first duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please?

THE WITNESS: Robert M. McCartin, M-c-C-a-r-t-i-n.

DIRECT EXAMINATION

BY MR. BEHAR:

Q Mr. McCartin, what is your occupation?

A Special Agent for the Federal Bureau of Investigation.

Q For how long have you been employed as a special agent?

A 13 years.

Q Did you have a specific assignment in February of 1974?

A Yes, I did.

Q What was that?

A The investigation of bank robbery type matters.

Q At that time, in February of 1974, did you have communications with then Assistant U.S. Attorney Robert Clarey?

A Yes, I did.

Q Did you have communications in reference to U.S. v. Hilton?

A Yes.

Q Do you recall receiving a phone call from Mr. Clarey relating to a letter that he had received from Mr. White in February of 1974?

A No, sir, I do not.

Q Do you recall contacting anyone in February of 1974, to inquire into or to influence Mr. White's status at Sing Sing prison?

A No, sir.

Q Did you see Mr. White at that time in February of 1974?

A I'm not sure of the exact date. I did see Mr. White, but I saw him prior to trial, yes, sir.

Q Did you visit Mr. White in Sing Sing?

A Yes, I did.

Q And, Agent McCartin --

THE COURT: "Prior to trial" meaning prior to the trial in this district?

THE WITNESS: Yes.

THE COURT: Which, I understand, was about July 15, 1974?

MR. BEHAR: I believe it started July 15, the picking of the jury was on the 15th.

Q Agent McCartin, what prompted your visit to Sing Sing to see Mr. White?

A Just an inquiry into his well being, a social visit as opposed to an official visit.

Q Did Mr. Clarey ask you to go to Sing Sing to see if you could have him moved from administrative segregation?

A No.

Q Did you see any officials and inquire at that time as to Mr. White's status or confinement in Sing Sing State Prison?

A No, sir.

MR. BEHAR: No further questions.

THE COURT: Any questions, Mr. Hilton?

MR. HILTON: (indicating the negative).

THE COURT: Let the record show Mr. Hilton

has indicated the negative.

MR. BEHAR: Your Honor, may we take a short recess? It may take a while for the witness to get here. The witness is Mr. White.

THE COURT: We will take a recess until the next witness, Mr. White, arrives.

(Recess taken.)

(After recess:)

MR. BEHAR: Your Honor, I'd like to call Mr. Truebner back to the stand for one minute.

THE COURT: Surely.

(Mr. Truebner resumes the stand.)

DIRECT EXAMINATION

BY MR. BEHAR: (continuing)

Q I'd like to remind you you are still under oath, Mr. Truebner.

Did you represent the United STates Government in U.S. v. Hilton and Chesimard in the Southern District in both trials in December of 1973?

A I did.

Q And who represented Mr. Hilton?

A Robert Bloom, Esq.

MR. BEHAR: Thank you.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. BEHAR: The Government calls Mr. Avon White to the stand.

A V O N W H I T E , having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your name and spell it for the record, please.

THE WITNESS: Avon White, W-h-i-t-e.

DIRECT EXAMINATION

BY MR. BEHAR:

Q Mr. White, are you currently serving a prison sentence, federally, for bank robbery?

A Yes.

Q And in January, 1974, did you testify before a Grand Jury in this district?

A Yes.

Q And at that time did you meet Assistant United States Attorney Robert Clarey?

A Yes, I did.

Q When was the first time you met Mr. Clarey?

A I'd say around 5 or 10 minutes before I seen the Grand Jury.

Q And after you testified before the Grand Jury, you were returned to Sing Sing Prison?

A Yes.

Q And following the return to Sing Sing prison, when was the next time you saw Mr. Clarey?

A About 9 months ago. It was in July.

Q Was that when you came to this courthouse to testify in U.S. v. Freddie Hilton?

A Yes.

Q Inbetween the first time you saw Mr. Clarey and the second time you saw Mr. Clarey, did you speak to Mr. Clarey at all?

A No.

Q Mr. White, I'd like you to look at Government exhibit 1, and I ask you if you recognize that.

A Yes.

Q Did you write that letter?

A Yes, I did.

Q To Mr. Clarey?

A Yes.

Q I'd also like you to look at Government exhibit 3, and I ask you if you recognize that.

A Yes.

Q Is that a photostat of a letter you wrote to

Mr. Truebner?

A Yes, it is.

Q Did you write both letters at the same time?

A Yes.

Q As to the letter you wrote to Mr. Clarey, Government exhibit 1, before you were brought down to this courthouse in July of 1974, did Mr. Clarey contact you as to the matters discussed in that letter?

A No.

Q During that period did you speak to Agent McCartin --

A Yes --

Q (continuing) -- of the FBI?

A Yes.

Q Did Agent McCartin talk to you about that letter to Mr. Clarey?

A Only thing he did was he mentioned to me that Mr. Clarey had received it.

Q Did he say anything to you -- Agent McCartin -- on that matter?

A No, not that I remember.

Q Now, as to Government exhibit 3, the letter to Mr. Truebner, did Mr. Truebner contact you about that

letter?

A Yes.

Q And how did he contact you?

A Though another letter.

Q I ask you to look at Government exhibit 4. Do you recognize that?

A Yes.

Q Is that the letter you just referred to?

A Yes.

Q Aside from what Mr. Truebner said in the letter, Government exhibit 4, did he say anything else to you about the matter described in your letter?

A No.

Q To your knowledge, did either Mr. Clarey or Mr. Truebner do anything to change your status at Sing Sing Prison?

A No.

Q And for how long a period of time did you stay at Sing Sing Prison?

A About 16 months.

Q And during that 16 month period, for how long a period of time were you in administrative segregation

A The whole time I stayed there.

THE COURT: Can you tell us from when to

when?

THE WITNESS: From October 26, 1973 till February 14, 1975.

THE COURT: So, you were only recently releaued from Ossining?

THE WITNESS: Yes, sir.

(continued next page.)

Q Mr. White --

THE COURT: In administrative segregation, do you see other inmates who are testifying for the State or the Government.

THE WITNESS: No. What's -- like it's for disciplinary reasons also have guys down there for that.

THE COURT: I see. But do you meet with them, mingle with them?

THE WITNESS: I talk to people down there, yes.

THE COURT: Do you have a single cot cell or are you in some kind of tent?

THE WITNESS: It's a one-man cell, you know, and they have a yard outside where all the guys go out to the yard together.

THE COURT: I see.

That's what you meant when you said, "You're in solitary confinement."

THE WITNESS: Right.

THE COURT: Did you expect Mr. Clarey or Mr. Trubner to do anything to help you?

THE WITNESS: Well, at the time I had pleaded guilty in Southern District and I had pleaded guilty

in the Bronx and I wanted them to see if they could push my sentence forward so I could get out of there.

Because I was at the time, I was in there for approximately 4 months and only time I could come by myself was once a day for one hour, you know, and I felt I was being punished for something.

THE COURT: At the time you testified in this trial, which was on July 16th, of last year, did you remember that you had written this letter?

THE WITNESS: Yes.

THE COURT: You did? When you were sitting on the witness stand you remembered it?

THE WITNESS: Yes.

THE COURT: Did you feel let down by the Government because they hadn't or couldn't do anything for you?

THE WITNESS: No, sir. I didn't feel let down. There was nothing -- like there was nothing they could do because I was in the custody of the State. Nothing they could do.

BY MR. BEHAR:

Q In fact, Mr. White, did you suffer any ill effects under the administrative segregation aside from the inconvenience?

A No.

Q Mr. White, you were sentenced this past week were you not, in State Court?

A Yes.

Q And what sentence did you receive?

A 10 years.

Q Was that consecutive or concurrent to your Federal time?

A Consecutive.

MR. BEHAR: Thank you, no further questions.

THE COURT: Mr. Hilton, any questions? You go ahead. Ask the questions.

CROSS EXAMINATION

BY MR. HILTON:

Q Avon, you know me, right?

A Yeah.

Q You no longer in Sing Sing prison?

A No.

Q Where you at now?

MR.BEHAR: Objection, your Honor. Present location of the witness is --

THE COURT: I didn't hear the question.

MR. BEHAR: The question was, where is Mr. White now.

THE COURT: Objection sustained.

MR.BEHAR: Thank you, your Honor.,

Q Why were you moved from Sing Sing?

THE COURT: "Why?"

MR. BEHAR: Objection, your Honor, "Why."

THE COURT: I'll allow that.

A I was moved from Sing Sing because I was given a sentence in the federal court and Sing Sing is a State prison, not a federal prison.

THE COURT: Your term was up that term?

THE WITNESS: I was being held in Sing Sing as a New York City detainee.

THE COURT: Oh. Pending the outcome of the State case? I see.

Q In your letter, you say you have --

THE COURT: Mr. Hilton, you're going to have to speak a little louder.

Q In your letter, you mention that you have had nervous breakdown. Why would you have a nervous breakdown?

A I didn't mention that in my letter.

Q I have that right here.

A Well, read it.

Q It says;

"Mr. Trubner, I am writing you this letter

to see if there is any way possible that you can have me moved from Ossining Correction Facility to another institution, because I am being held in solitary confinement and I am on the verge of having a nervous breakdown, and I am very desperately in need of your help.

"Mr. Trubner, I know this matter is out of your hands, but I would really appreciate it if you got together with the people concerned and see what they can do for me now that I have been very good boy at this point and I will continue to do so as long as I know that people are trying to help.

"You know, I've gone too far to turn back now, and I so desperately need your help. I didn't let you down when you needed me, so don't let me down now, because I really need your help. Please help me. Please help me.

"Avon White."

THE COURT: Mr. Hilton wants to know, what did you mean when you said that you're"on the verge of a nervous breakdown"?

THE WITNESS: Because I was constantly in myself for a period of 23 hours a day. And I couldn't get no kind of -- no kind of privileges or

nothing.

Q When you were at Sing Sing,you were allowed to associate with other inmates in the yard?

A Yes.

Q You was?

A Yes.

Q Is it not true that they had a special guard for you?

A Special guard for --

Q Yes.

A No. When I was in Sing Sing I was in the house in block C which is the segregation block. And they had same yard for everybody in the segregation.

Q They did? Was your life ever threatened in Sing Sing or any attempt made on your life?

A Yes, was threats made.

Q Attempt?

A No.

Q You know a guy named Miami?

A Do I know a guy named "Miami"?

MR. BEHAR: I'll object, your Honor.

Q Did he ever --

A Yes.

Q At no time was any attempt made on your life

in the yard?

A No.

Q This spot they had you in segregation for, is that where they have like in the hole because of the boxes?

A Right.

Q Now, they have people there for disciplinary action?

A Right.

Q Sing Sing?

A Right.

Q You weren't with those people, you were with your associates, Rats and Snitches?

A No.

Q You weren't?

A No.

MR. HILTON: Nothing further.

See you in court.

THE COURT: You may step down.

MR. HILTON: The more you testify, the more I come to court, and the more you're going to be here.

THECOURT: Anything further?

MR. BEHAR: Could we excuse the witness,

please, your Honor?

THE COURT: Yes.

(Witness excused.)

THE COURT: Got anybody else?

MR. BEHAR: The Government rests at this point, your Honor.

THE COURT: Government rests. You have nothing further to say on this, do you, Mr. Hilton? You have nothing further to say on this?

(Mr. Hilton nods head.)

THE COURT: All right.

Decision reserved and thank you.

The hearing is concluded.

MR. BEHAR: Thank you, your Honor.

THE COURT: I'll get a copy of the transcript and send a copy of the transcript to Mr. Bloom.

MR. BEHAR: Your Honor, I'd like the record to reflect that it is now 18 minutes before 4 o'clock and Mr. Bloom has not come present.

In addition, your Honor, the Government was planning to brief this matter.

THE COURT: How long do you want?

MR. BEHAR: Government would ask for one week, your Honor.

THE COURT: All right.

All briefs -- I assume that the transcript will be delivered by -- to be delivered to both lawyers by Monday.

MR.BEHAR: Your Honor, it will be delivered to Mr. Bloom's office tomorrow morning by messenger from my office.

THE COURT: Briefs on both sides to be submitted by 4 o'clock Friday the 18th.

MR. BEHAR: Thank you, your Honor.

THE COURT: Okay.

* * * * * * *

INDEX

Witness	Direct	Cross
Robert Clarey	10	
Peter Truebner	32	
Robert McCartin	43	
Avon White	47	54

EXHIBITS

Government's Exhibit No.	Description	For Id.	In Ev.
1	Letter	12	13
2	Transcripts	26	28
3	Letter	35	
4	Letter	40	

* * * * *

A-494

Federal Bureau of Investigation

Date of transcription 4/12/73

1.

ROBERT W. EDGAR, Professor of Social Science, Queens Community College, work telephone number 445-7500, home address 137-35 Geranium Avenue, home telephone number IN 3-6039, advised that he is the registered owner of a 1967 four door, aqua-blue Chevrolet, bearing New York license 988QDA.

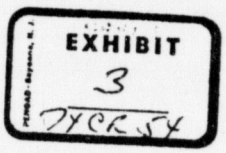
* * * * *

DR. EDGAR was furnished for his review photographs of known bank robbers in the New York area and photographs of known militants with the Black Liberation Army (BLA). He reviewed these photographs but failed to make an identification.

Interviewed on 4/10/73 — at Queens, New York — File No. NY 91-12611 by SA WILLIAM M. BAKER: lon — Date dictated 4/11/73.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Government Exhibit 28 — 74 Cr. 54



To Hon. Judge Nicoles.

The members of the jury would like to either read or hear what the charges Count 1, 2 & 4 against Mr. Helton are.

If we the members of the jury cannot come to agreement by 7 PM tonight, we would then request to postpone further deliberation until tomorrow. Your convenient to the court.

Thank You.

Daniel R Ramaynos

Foreman of the Jury

A 496

EXHIBIT
5
74 CR 54

To - Honorable Judge Austin.

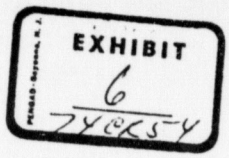
Since we cannot reach an agreement at this time -

We feel and agree that it would be better if we postponed our deliberations until tomorrow. May be after a night's rest we will be able to think more clearly and reach a unanimous verdict.

Yours,
Daniel L. Rosenzweig
Foreman of the Jury.

ATTACHED. 12 Copies "THE GRAND JURY CHARGES"

A 497



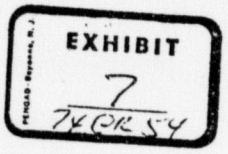
To The Honorable Judge Weibel.

We have a very emotionally disturbed male juror who has created a point of personal privilege, which in my opinion would require medical attention. * (?) *

This condition is always subject to change & unpredictable & unfortunately with no alternative.

It is also my opinion that if you were to speak to the jurors as to the seriousness & significance of this charge, it may help clear up any other issues and help in deliberation. This may also help the emotional juror.

Respectfully,
Paul L. Parness
Attorney at Law



To The Honorable Judge Hoffler.

Questions:

1. Does the Jury have to find Mr. T. Hilton, in and driving the car on April 10th to find for a Guilty on Counts one and ~~two~~ two,

2. To the best of our knowledge, His Honor stated in the clarification (re Count 4 P2 on page 2) committed one of the following overt acts (overt acts 1 & 2) 8. The indictment states "The defendant and co-conspirator committed several overt acts including ~~but~~ but not limited to the following, Two overt acts follows:

Our new environmental surrounding has helped us a great deal.

Thank You

Daniel R. Bongiovi

Foreman of the Jury.

EXHIBIT
8
74 Cr. 4

D. The Honorable Judge Weinfeld

We the members of the jury feel that we have covered every aspect of the case presented against Mr. J. Hilton and have been unable to come to agreement (unanimously on two of the three count indictment.)

We are in unanimous agreement on Count number four.

Hoping you will accept this as our ultimate decision.

Thank You.

Daniel R. Romagnolo

Foreman of the Jury.

very surly letter from which I am now quoting.



A 500

To The Honorable Judge Winkler

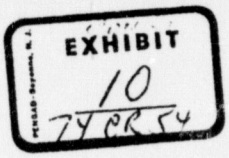
We seem to be making some progress and request that you grant us permission to continue our deliberation until further notice

Thank You

Jamil R. Romagnolo

Foreman of the Jury

A 501



To The Honorable Judge Mathis

We Have Reached

A Unanimous

Verdict

In Counts One & Two

Thank God
(& THANK GOD)

Daniel C. Tomaszek
Foreman of the Jury

A 502

EXHIBIT 11 24 C.F.R.

Chief Judge Nichols,

I feel that my reference to my problem regarding stress both physical & mental [illegible] individual and I can not endure [illegible] of stress and strain for [illegible] approach in this case. I also point [illegible] permanent damage could be done [illegible] my honest opinion and longer periods of stress [illegible] could aggravate the situation.

John Fallon
January 6

PB:SMB:ms

HAND-DELIVERY

February 27, 1975

Hon. Daniel A. Fusaro
Clerk, U.S. Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, New York

Re: United States v. Freddie Hilton
Docket No. 74-2675

Dear Mr. Fusaro:

The above-captioned appeal is scheduled for oral argument during the week of March 31, 1975. The panel which will hear this case has not been published. Therefore, would you kindly transmit the enclosed copies of this letter to the Judges who have been designated to hear the case.

Appellant's brief has previously been filed. The United States is scheduled to file its brief on or before March 21, 1975. In his brief appellant urges, inter alia, that he was denied "a full and fair opportunity to cross-examine and present extrinsic evidence on [Avon] White's motive to falsely implicate appellant." (Appellant's brief p. 40). Appellant alleges that the Trial Court committed reversible error by not allowing him to cross-examine Avon White about White's knowledge of appellant's notoriety as a member of the Black Liberation Army and about his belief that he would get substantial consideration from the Government if he testified against a member of that organization.

Last week, while preparing the brief for the United States, we learned that the witness Avon White had written a letter to the Assistant United States Attorney in this office who represented the Government at trial. That letter, which has been enclosed herewith as Exhibit "A", had not been revealed to defense counsel prior to, or during, the course of that trial.

In view of this Court's remand in United States v. Melvin Kearney, Docket No. 74-2239 (Judges Feinberg, Hays and Holden) a case which involved an almost identical factual situation concerning the same witness and a strikingly similar letter which is also enclosed herewith (Exhibit "B"), we respectfully suggest that the Court remand this case to the United States District Court for the Eastern District of New York for a hearing before said District Court to determine (1) whether the letters constitute material under Title 18 United States Code §3500 and if so, (2) whether the Government's failure to produce said letters prior to the cross-examination of Avon White constitutes sufficient error to warrant a new trial.

Appellant's counsel, Mr. Bloom, has been informed of these events, and joins in our request to remand this case for a hearing.

Respectfully yours,

DAVID G. TRAGER
United States Attorney

By:

STEPHEN M. BEHAR
Assistant U.S. Attorney

Encls.
a/s

cc: Robert J. Bloom, Esq.
351 Broadway
New York, New York 10013

"B" A 505 S.D.NY. 74

ATT; MR, TRUEBNER

I AM WRITING YOU THIS LETTER TO SEE IF THERE IS ANY WAY POSSIBLE THAT YOU CAN HAVE ME MOVED FROM OSSINING CORRECTIONAL FACILI TO ANOTHER INSITUTION CAUSE I AM BEING HEID IN SOLITARY CONFINEMENT AND I AM ON THE VERGE OF HAVING NERVOS BREAK DOWN AND I VERY DESPERA IY NEED YOUR HEIP MR, TRUEBNER I KNOW THAT THIS MATTER IS OUT OF YOUR HANDS BUT I WOUID REAIIY APPRECIATE IT IF YOU GOT TOGETHER WITH THE PEOPLE CONCERNED AND SEE WHAT THEY CAN DO FOR ME NOW I HAVE BEEN VERY COOPERATIV TO THIS POINT AND I WILL CONTINUE TO DO SO AS LONG AS I KNOW THAT PEOPIE ARE TRYING TO HEIP ME NOW I'VE GONE TO FAR TO TURN BACK NOW AND I SO DESPERATIY NEED YOUR HEIP I DIDNT LET YOU DOWN WHEN YOU NEEDED ME SO DONT LET ME DOWN NOW CAUSE I REAIIY NEED YOU NOW PLEASE HEIP ME

Sincerly Yours

avon white 74-608

130

A 506 February 19, 1974

Mr. Avon White (#74-608)
354 Hunter Street
Ossining, New York 10567

Dear Mr. White:

We are in receipt of your letter of February 8, 1974. We are sympathetic to the problem which you have called to our attention and are actively trying to find a solution. In this connection, we have contacted both your attorney and the District Attorney's office in the Bronx to see if other arrangements can be made.

We certainly have not forgotten about you and hope to be able to report some progress in the near future.

Very truly yours,

PAUL J. CURRAN
United States Attorney

By: _____
PETER L. TRUEBNER
Assistant United States Attorney

cc: John Curley, Esq.
Bronx District Attorney

GOVERNMENT EXHIBIT 4 HEARING 74 CR. 54

"A" U

A 507

2-8-74

ATTI MR. CIAREY

I AM WRITING YOU THIS LETTER TO SEE if THERE is ANY WAY POSSIBLE THAT YOU CAN HAVE ME MOVED FROM OSSINING CORRECTIONAL FACILITY TO ANOTHER INSITUTION CAUSE I AM BEING HELD IN SOLITARY CONFINEMENT AND I AM ON THE VERGE OF HAVING A NERVOUS BREAK DOWN AND I AM DESPERATELY IN THE NEED OF YOUR HEIP, MR. CIAREY I KNOW THAT THIS MATTER is OUT OF YOUR HANDS BUT I WOUID REALLY APPRECIATE IT if YOU WOUID GET TOGETHER WITH THE PEOPIE CONCERNED I HAVE BEEN VERY COOPERATIVE WITH THE GOVERNMENT AND AS YOU KNOW I AM READY TO GO WITH YOU THIS TIME ON THE GOVERNMENT VS. HILTON AND I WILL CONTINUE TO DO SO AS LONG AS I KNOW THAT PEOPIE ARE TRYING TO HEIP ME. I WONT LET YOU DOWN WHEN YOU NEED ME SO DONT LET ME DOWN NOW CAUSE I REALLY NEED YOU NOW PIEASE HEIP ME

Sincerly yours

avon white 74-608

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-54

FREDDIE HILTON, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

May 2, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

ARLYNE SEGAL
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEPHEN BEHAR, ESQ.
Assistant U.S. Attorney

J. REIF, ESQ.
Attorney for Robert Bloom

ROBERT BLOOM, ESQ.
Attorney for Defendant Hilton

THE COURT: Mr. Bloom you sent me a letter.

It is little wonder that one reads and hears of the waning confidence in the fairness of the courtsand it is little wonder that those accused of crime carry little or no respect for the courts and those who participate in the process when courts conduct significant proceedings in the manner this hearing was conducted.

What do you mean by that?

MR. BLOOM: Just what it says.

No explanation is necessary.

Well, I do know that a hearing was conducted in my absence.

There was no attorney for my client who is totally unskilled and untutored in the law.

Now your Honor was informed by a certain telephone message of my unavailability. Not because I was on vacation, nor was it because I did not want to take part in those proceedings.

I was actually on trial in another jurisdiction.

Your Honor was informed of that.

THE COURT: You do not have to go into an explanation. The letterspeaks for itself.

MR. BLOOM: That the Court to the general

public as expressed yesterday, on Law Day, that there are certainly misgivings of the total justice of the Court and of the people, indeed, in our society, who are involved in the courts.

Your Honor reads in the newspapers, as I read in the newspapers, and all the other persons who are involved in the courts read the newspapers, that there are, indeed, misgivings about the fairness of the criminal justice system.

THE COURT: Have you ever thought that the contribution that some lawyers make to the criminal justice system is the reason for the low esteem in which the public holds the courts?

MR. BLOOM: I have heard of Mr. Erlichman and Mr. Haldemann and Mr. Mitchell.

THE COURT: Have you made such a contribution, Mr. Bloom?

MR. BLOOM: I think that I have made a positive contribution.

THE COURT Why? Where were you at 3 o'clock on April 10th? Because, I was waiting for you.

MR. BLOOM: I was directed by Justice Greenfield in a murder case involving the murder of two police officers in New York County.

The case had gone to the jury. I was that day

immediately available to that trial. I was not available to your Honor.

I was directed to be available immediately and I was available. I was in my office.

THE COURT: Did Justice Greenfield direct you to be in the courtroom? Were you directed to be in the courtroom?

MR. BLOOM: I was directed to be immediately available and I was at my office. My office is one corner over from the courthouse.

THE COURT: Were there any other counsel involved in your case?

MR. BLOOM: There was one other counsel.

THE COURT: You were co-counsel?

MR. BLOOM: That is correct.

Mr. Michael Ratnar was my co-counsel.

THE COURT: You have a telephone service.

MR. BLOOM: I have two telephone services.

THE COURT: You just deliberately did not respond to those telephone calls.

MR. BLOOM: I didn't receive them.

MR. REIF: I object to this.

THE COURT: This is a little late.

MR. BLOOM: This is my attorney, your Honor.

THE COURT: Did you receive a telephone call

telling you to come, to call chambers and to answer this call immediately?

MR. BLOOM: Did I ever? Yes, I did.

THE COURT: What is the reason that you didn't come?

MR. BLOOM: Would you like to hear the telephone message that I received?

THE COURT: Yes.

MR. BLOOM: That Judge Mishler would like to hear from you.

THE COURT: Did he ever hear from you?

MR. BLOOM: I think your Honor, the following morning.

THE COURT: I am talking about April 10th, when you failed to appear.

MR. BLOOM: The proceedings of April 10th?

THE COURT: The proceeding that took place on April 10th.

MR. BLOOM: On April 11th, which was a Friday, hand-delivered to me was a copy of a transcript of that proceeding.

THE COURT: Which indicated on the last page that if any briefs were to be submitted, that they were to be submitted on Friday the 18th of April.

Rather than submitting a brief, you sent a

very surly letter from which I am now quoting.

Am I correct as to the facts as to what transpired?

MR. BLOOM: I asked that the proceeding of April 10th be declared a nullity. That is the only manner in which I can direct myself to the merit of the proceeding.

THE COURT: When I received that letter, which I believe must have been April 18th, of 1975, I gathered that you had received my telephone messages. That they had been picked up.

MR. BLOOM: I can't recall exactly when I picked it up. I am not sure whether it was late in the day on April 18th. That is the first one. I am not sure when I picked that up. It could have been April 18th, or April 21st, Monday, I don't recall.

I believe I went to Westchester April 18th. I went to Westchester or somewhere other than New York County.

THE COURT: You picked up the messages.

When you picked up the messages, you knew that I had received your letter.

MR. BLOOM: I assumed that the messages were because no one likes to hear criticism of yourself.

I assumed that from the messages that you wanted me to get in touch with you. That it was in reference to the letter.

I didn't know whether perhaps you wanted to declare the proceedings of April 10th, a nullity.

But I did call your chambers on the following Monday.

THE COURT: Was that April 21st?

MR. BLOOM: I don't know. I am not sure.

THE COURT: I got no such message.

MR. BLOOM: You did not?

THE COURT: I did not.

Now, when you state that you were actually engaged in New York County before Mr. Justice Greenfield, that was for Gabriel Torres. Wasn't the indictment against him dismissed?

MR. BLOOM: Yes, it was.

THE COURT: Was that at the conclusion of the Government's case?

I believe that was about the 30th or 31st of March. Is that correct?

MR. BLOOM: March 30th.

THE COURT: Well then, at that point, you weren't involved in the case any more.

MR. BLOOM: This date of April 10th had not

been set as far as I understood.

Now I again want to outline for the Court what took place. I would like to point out on the record the chronology of what took place at the trial of the United States of America against Fred Hilton.

Mr. Hilton was acquitted of the substantive charge of bank robbery. He was convicted of a conspiracy count.

He was sentenced by your Honor to the maximum term permissible under that count, 5 years maximum.

This is through absolutely no fault of my own and in a way I say that it was the inadvertentness of the United States Attorney of both this District and the Southern District, the trial lawyers, the Assistant United States Attorneys, both of them, Robert Clarey, who is in charge of the prosecution of the Hilton case here, that is as to the prior case of ? Fred Hilton, there was named Avon White. And Avon White is still named.

I assume he was going through or about to have a nervous breakdown. He needed some assistance from Mr. Clarey.

Mr. Trubner, who was then the Assistant United States Attorney in the Southern District, and the Assistant United States Attorney in this

District, Mr. Behar, who is the United States Attorney in this other case, where Avon White testified, Mr. Behar was the attorney.

At some point the Assistant United States Attorney, Mr. Henley of the Southern District, and Mr. Behar, had one of the letters of Mr. White.

Subsequent to that and only subsequent to what was in the letter, Mr. Clarey relayed to me and to the Court that he was in receipt of it.

The United States Attorney was in receipt of that letter.

Inadvertently, or deliberately or whatever, he was in receipt of it. He knew the issue was pending before the United States Court for the Second Circuit.

Not only my motion, but also a motion by the United States Attorney's office, who wanted to have a hearing on the very issue.

That letter should have been turned over.

What it comes down to is that Mr. Hilton had to have a hearing. A hearing was a necessity. This hearing was either inadvertently delayed or these were dilatory tactics.

I am just putting this on the record.

I am putting this on the record because I would like an Appellate review of this proceeding.

The instant proceeding. I would like the record to have all of the details, not just some of the details.

THE COURT: You are brought in here today, because of possible charges of professional misconduct here, for failing to appear, and in sending this surly letter in response to telephone messages about your non-appearance here and all of the undue delays.

For the fact that you have also not complied with a direction of this Court.

(continued next page.)

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MR. BLOOM: I would ask that I be permitted to speak.

THE COURT: Go ahead.

MR. BLOOM: When the hearing was necessitated, as I recall, I initially thought that the hearing was to be scheduled by a call from me to your chambers which was sometime in March of 1975. I was on trial at that time.

THE COURT: You are not accurate. Because as soon as I got the mandate from the Court of Appeals, I had my clerk call your office. Am I correct that you have only one office?

MR. BLOOM: One office, correct.

THE COURT: My clerk did call your office. Am I correct with respect to that?

MR. BLOOM: That is correct.

THE COURT: Make sure to correct that letter. That will be the only place that you were correct.

My clerk called and I suppose left word with your answering service and said the Judge wanted to have a hearing on the 31st.

MR. BLOOM: And when I heard the 31st, I called and I said Icouldn't be here because I was on trial.

THE COURT: Because you were on trial? You

told my clerk that?

Have you written a letter? Your letter is dated March 27th said that incidentally my clerk advised you that I was to start a 14-defendant narcotic trial on April 14th, and that April 14th was the only day that I would be available. It would be Friday and that is my motion day.

MR. REIF: Your Honor --

THE COURT: And you said Mr. Hilton wouldn't come in on Friday because he is a Muslim.

MR. BLOOM: That is correct. I said that.

THE COURT: And then, on April 4th, when I realized that I had a free week, --

MR. BLOOM: Excuse me for interrupting you. As to the matter of March 27th regarding the availability, --

THE COURT: In two or three weeks. That is from March 27th. You weren't available?

MR. BLOOM: I was actually engaged.

THE COURT: You were available on March 31st. You were not engaged before Justice Greenfield. I will read you a letter I received from Justice Greenfield in a moment.

MR. BLOOM: March 31st, I am not certain.

THE COURT: That's right. I want some of the

inaccuracies to be on the record. Do you want me to tell you what Justice Greenfield said?

MR. BLOOM: Yes.

continued next page

THE COURT: This letter that I received from Judge Greenfield is dated April 14, 1975. Re: People v. Anthony Bottom, Herman Bell, Albert Washington, Gabriel Torres and Francisco Torres.

Dear Judge Mishler: With respect to your inquiry about the availablity of Robert Bloom, Esq. and others please be advised:

1. Selection of the jury commenced January 6, 1975. Verdicts were returned against Bottom, Bell and Washington on the charges of murder on April 10, 1975, at 4:10 p.m.

2. At the outset of the case the appearances were as follows: Anthony Bottom-Donald Tucker, Esq. Herman Bell-Michael Ratner, Esq.Albert Washington Pro se, Gabriel Torres-Robert Bloom,Esq.,Francisco Torres-William Mogulescu, Esq.

3. After the close of the People's case the Court granted the motes of Messrs. Bloom and Mogulescu to enter a trial order of dismissal with respect to Gabriel and Francisco Torres on March 31, 1975.

4. When charges against the defendants

Torres were dismissed, Mr. Bloom and Mr. Mogulescu announced that they would thereafter appear for defendants Bell and Bottom respectively. The Court pointed out that these defendants already had counsel designated by the Appellate Division who would not be relieved of their responsibility. Messrs. Bloom and Mogulescu then announced that they had been "retained" by defendants Bell and Bottom, and that they would appear as "co-counsel". The Court pointed out that under those circumstances they would be considered volunteers and would not receive any further compensation under Article 18B. The Court further pointed out potential problems with conflicts of interest. The attorneys indicated that all clients had acquiesced in the new arrangement. Thereafter Messrs. Bloom and Mogulescu took over all the questioning and all the summation, leaving previous counsel with little to do.

I trust this answers your inquiry. If there is any further information that you wish, please do not hesitate to let me know.

THE COURT: So the Court started trying to reach you April 14th and couldn't. The Court couldn't give you any other day except Friday, April the 18th. That was the only open available day, April 18th.

You nevertheless imposed your interest, as a matter of fact, you intruded between him and his assigned counsel in New York County, totally disregarding the demand or requirement of this court. You felt I should await your convenience. That has never been told to this Court before or to me.

MR. BLOOM: Your Honor, it is a fact that Mr. Herman Bell was represented by Mr. Michael Ratnar, who had never before tried a criminal case. He was an Appellate Division appointed attorney. He was not an experienced attorney. He had never tried a criminal case, much less a murder case. He requested that I work with him in this case. He has no experience whatsoever when he undertook the representation of Herman Bell in this murder case.

This was with the understanding that was made clear to all parties that myself and Mr. Mogulescu, who is also quite familiar with this case, would be in this case to the conclusion which is what happened. Otherwise, it would have been a total

miscarriage of justice to have left Mr. Michael Ratnar in a position such as that and left Herman Bell without an experienced attorney.

Michael Ratnar was his only attorney.

Michael Ratnar is a brilliant scholar. But, he is not an experienced trial attorney.

He has, literally never tried even a misdemeanor case until the case we are now discussing.

That would not have been justice to leave Mr. Michael Ratnar alone as the only attorney representing Mr. Herman Bell.

THE COURT: He was familiar with the handling of the defense.

MR. BLOOM: I had to consider the defense of Mr. Bell.

Excuse me, your Honor, I could not leave Mr. Ratnar alone. I just don't consider that justice.

THE COURT: You don't consider leaving Mr. Ratnar alone justice?

You and Mr. Ratnar have the same standing here as lawyers, as practicing lawyers before the Court.

The Court is considering whether you have a right to continue practicing before this Court.

MR. BLOOM: I am an attorney. I have a right to be heard as well as he does.

THE COURT: And I am addressing you, Mr. Bloom. You are only talking about your convenience. Your client, there, was represented by co-counsel who could have represented him waiting for a verdict.

I am questioning you as to what happened on the 11th or the 10th.

Avon White was brought in here from another institution.

MR. BLOOM: I didn't know that.

THE COURT: He was brought in here from another institution.

MR. BLOOM: I did not know that he was brought before your Honor.

I had an obligation to my client.

THE COURT: Let me tell you what the proceeding is from here on.

MR. BLOOM: Of course, your Honor.

THE COURT: You are most surly before me as you were in your letter. The letter was uncalled for.

Number two, Avon White was brought at my direction. Because I directed that he be brought here. Not because it was convenient for you to be here at 2 o'clock on the 10th.

MR. BLOOM: That is the fault of Mr. Trubner,

that he was brought here.

If Mr. Clarey had an appointment and he could not be here, if a United States Attorney for the Southern District, a United States Attorney connected to the Southern District called and said, Judge, I am sorry, I can't be here, I have another appointment for Thursday, Friday, that would be all right.

THE COURT: Those persons were brought in here to testify. That hearing would have taken only about 15 minutes.

Incidentally, I said I still had a jury case that was going on. I intended to take you at 2 o'clock immediately. I would have taken you at 4 o'clock if you had called. If you had called and asked for 5 o'clock, I would have taken you at 5 o'clock in this matter.

You have been impossible.

When you called, my clerk said that the Judge said, you can get here at 3 o'clock.

MR. BLOOM: That was about 12 o'clock. Your clerk should have related that I wouldn't be here.

THE COURT: This is a clear example of your behavior.

MR. BLOOM: I am stating the facts as I

recall them. A 528

There came a time after I came to represent Herman Bell that I state that I had some contact with your chambers, at least a half a dozen times, and I say your chambers as your staff.

THE COURT: I got your telephone messages. Usually I destroy them, but in your case I saved them.

For, [illegible] 2:30, U.S. against Freddie Hilton, the hearing has been scheduled for 4/18 Friday, 2 o'clock. Because it is a Friday. And as a Muslim, Mr. Hilton will not appear in court on Friday. Can it be scheduled another date other than the 18th?

You wanted a date other than the 18th.

MR. BLOOM: That, I believe, is my recollection.

THE COURT: That is correct.

I couldn't handle the matter at any other time. I started a trial of 14 defendants in a narcotics case.

MR. BLOOM: I am aware of that.

THE COURT: I am talking.

MR. REIF: Your Honor, excuse me. I have a right to be heard.

MR. BLOOM: That is right.

MR. REIF: What he has said is right.

Mr. Bell had a right to be represented.

THE COURT: The case against his client had been dismissed. The case against Gabriel Torres had been dismissed.

MR. BLOOM: I had been retained to represent Mr. Bell. Mr. Bell was my client.

THE COURT: He had Mr. Ratnar to represent him.

(continued next page.)

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THE COURT: (continuing) This Court had a right to make certain demands on the lawyers who practice before it. This Court had a hearing scheduled in the matter of the Government versus Hilton. There was a hearing to be held. Your client's case was dismissed on the 31st of March.

MR. REIF: Mr. Bloom was retained to represent --

THE COURT: Who are you?

MR. REIF: I am representing Mr. Bloom.

THE COURT: I am going to recite all the other telephone calls.

April 10th, jury deliberating on Bloom case at 4:05.

April 10th, first at 11:15, Bloom called to say that his jury went out last night at 11:15.

On the date of the hearing, Bloom called to say that his jury went out last night and he did not know if they will be through by 2 P.M. He is in Supreme, Centre Street. He has called back at 12:30.

You called at 12:30. You called here at 2 o'clock, 3 o'clock.

MR. BLOOM: Corre[illegible].

THE COURT: You could have been here. You could have asked to be called here if there was any

problem with the verdict. You could have been called here and you could have shuttled across the bridge. That happens every day in the week.

MR. BLOOM: There could have been a question from the jury. Mr. Ratnar had never been in a situation with a man who was facing a mandatory life sentence. I was not going to leave him.

THE COURT: Did you ask Justice Greenfield if you could attend this hearing? That you could be called in the event if there were any problems?

MR. BLOOM: Justice Greenfield had directed me to be immediately available. I was in my office which is a three minute walk from the courthouse.

THE COURT: April 10th was the hearing date. Let us both understand the problem with the date. What yousaid in your phone calls on all those phone calls, you see I picked them up because I have about 30 other matters to take care of today.

MR. BLOOM: I would ask your Honor to permit me to make a statement.

THE COURT: No. No, I must finish with this because it is critical. No.

Why didn't you submit an answering brief when I had specifically asked for one?

MR. BLOOM: On April 10th, there was an

illegal hearing that should have been called a nullity. I feel that it is critical for me to explain that.

THE COURT: Yes.

MR. BLOOM: I couldn't be here on April 10th.

THE COURT: At no time did you say that. All you said and consistently said was that your jury will be going out on Monday which would have been the 7th, the 8th or the 9th.

I have your telephone messages.

MR. BLOOM: I left a message that I couldn't conduct a hearing in this proceeding on behalf of Mr. Hilton.

THE COURT: That hearing was a firm commitment.

MR. BLOOM: You never told me that. Your staff never told that to anybody.

THE COURT: Everybody was told that.

Witnesses were brought in here from particular places.

MR. BLOOM: There was no way in which I could have left my client. I was in my office on Thursday morning.

THE COURT: You certainly could have made a telephone call about this appointment.

You knew full well that the Court was trying a

case beginning Monday the 14th, and that thereafter, there was no chance of a hearing.

Why didn't you call at 4 o'clock, or 4:30, or 5 o'clock or 5:15 or 6 o'clock or 7:30? Why didn't you? I ask you that because I was under the impression that you intended to make it as quickly thereafter as possible.

MR. BLOOM: It is very significant that I never said yes to the 10th, and that is the whole point that I am making.

THE COURT: You just think that the Court is here for your convenience whenever you can make it. In the other part of your letter, you say that, I probably will be tied up for two or three weeks, but if I have a free day, I will call you and tell you I am ready.

That is what you said.

MR. BLOOM: I was involved with a murder case. I indicated that I was not available.

THE COURT: All right, I am about to file and give you a copy of what I said on page 14, in blunt terms:

The question of whether it was permissible in Bloom's absence, to conduct a hearing, goes to the question of whether the Court agrees to

interrupt its own calendar to accommodate an attorney.

I have indicated that the Court was ready to take the hearing. The Court had brought in witnesses especially for that hearing.

MR. BLOOM: I was in the Supreme Court. I was not ready at that point.

THE COURT: When you are ready points up the depths of your contempt for these proceedings.

I will file this.

The question of any further proceedings in this matter for disciplinary proceedings is continued without date. I'll think about it after I get a transcript of what transpired here.

MR. REIF: At this point, I would like to be heard.

THE COURT: No.

MR. REIF: I ask your Honor for the opportunity to be heard.

THE COURT: You are interrupting me.

MR. REIF: I intended to.

I am stating that I am entitled to be heard in this matter.

THE COURT: Let the record show that there are no less than 50 clients and lawyers in the courtroom.

Let the record also show that although this argument has gone on for a half an hour, Mr. Bloom's own schedule is a busy schedule. We all have busy schedules. Almost as busy as yours.

I work almost as hard as you do.

I am almost as sincere in the cases that I hear as you are in the way that you deal with your clients.

MR. BLOOM: I am very sincere when I deal with my clients.

THE COURT: I'm sure you are very sincere.

MR. BLOOM: I am very sincere, your Honor.

THE COURT: Don't have a conversation with me, Mr. Bloom. You know I am busy.

MR. BLOOM: Your Honor, I was involved in a murder case. I was not accommodating myself. I was accommodating my client.

(A woman in the audience stands and addresses the Court:)

MISS KRAFT: Your Honor, I want you to know that there are attorneys in the courtroom today who are here in support of Mr. Bloom.

THE COURT: What is your name?

MISS KRAFT: Kraft.

I want your Honor to know that there are

lawyers here in support of Mr. Bloom.

THE COURT: There are attorneys here in support of Mr. Bloom? How many of you here are in support of Mr. Bloom?

(Two attorneys are now standing.)

THE COURT: One, two.

There you are. That is who is here in support of Mr. Bloom.

MR. BLOOM: There are other lawyers.

Cases are adversary proceedings.

THE COURT: That's right.

MR. BLOOM: The defendant has an opportunity to be represented by counsel.

THE COURT: You have been --

MR. BLOOM: Your Honor, I would like to be heard at this time. You are placing the blame on the foot of the wrong individual. It is you,not me who was to blame. See it as you will.

THE COURT: That's the point I want to make. That is the point I want to bring to the attention of the Court of Appeals.

You said in your letter, It is little wonder that one reads and hears of the waning confidence in the fairness of the courts.

You say nothing about the lawyers who occasion

the problems of the Court by seeing nothing but their own problems.

This hearing is important. The Court of Appeals made it a point. Mr. Hilton is in jail under sentence. An immediate hearing is to take place.

Another attorney could have represented your client while the jury was deliberating.

You knew that the Court could hold a hearing at no other time than the week of April 8th.

MR. REIF: Your Honor has failed to take into account the fact that Mr. Bloom was not available April 10th because he was engaged in the trial of another individual. That is the point for the Court of Appeals to hear.

THE COURT: I believe that you should have communicated with this Court. Why didn't you?

MR. BLOOM: Why? I did.

THE COURT: We could have made it on the 26th.

MR. BLOOM: I had a problem on the 26th.

THE COURT: You knew that we had a hearing on for that date. Instead of having it at 2 o'clock, we could have had it at 4 o'clock or 5 o'clock on that Thursday.

That hearing was scheduled for Thursday at 2 o'clock.

You could have notifed Justice Greenfield that you had a hearing demanded by the U.S. Court of Appeals of the Second Circuit for 2 o'clock. If it had been necessary, the Judge could have been called for you.

MR. REIF: Judge Greenfield made a statement as to the rights of the defendant on trial in the Supreme Court.

THE COURT: He was represented by counsel on that matter. That defendant was represented.

Please, sir, I have a busy calendar, Mr. Bloom, Mr. Reif.

Next case.

* * * * * * * *

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS } ss
EASTERN DISTRICT OF NEW YORK

LYDIA FERNANDEZ being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 13th day of June 19 75 he served ~~a copy~~ two copies of the within Appendix for Appellee

by placing the same in a properly postpaid franked envelope addressed to:

Robert J. Bloom, Esq.
351 Broadway
New York, N. Y. 10013

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ~~Washington Street~~ 225 Cadman Plaza East, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this
13th day of June 19 75

IRENE B. COHEN (BEVILACQUA)
Notary Public, State of New York
No. 24-0683965
Qualified in Kings County
Commission Expires March 30, 1977

STATE OF NEW YORK, COUNTY OF New York ss.: AFFIDAVIT OF SERVICE BY MAIL

Lawrence Stern being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 11 Monroe Pl., Bklyn, N.Y. 11201

That on the 14 day of Feb. 1975 deponent served the within brief and appendix upon United States Attorney for the Eastern District of New York attorney(s) for Appellee in this action, at 225 Cadman Plaza East, Bklyn, N.Y., the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this 14 day of Feb 1975 Lawrence Stern